TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 271

CHARLES U. COTTING AND FRANCIS LEE HIGGINSON, APPELLANTS,

vs.

A. A. GODARD, AS ATTORNEY GENERAL OF THE STATE OF KANSAS, AND THE KANSAS CITY STOCK YARDS COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

FILED FEBRUARY 4, 1899.

(16,789.)

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a THE UNITED STATES OF AMERICA:

To Louis C. Boyle, as attorney general of the State of Kansas, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the first division of the judicial district of Kansas, wherein Charles U. Cotting and Francis Lee Higginson are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants, as in said appeal mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Amos M. Thayer, judge of the circuit court of the United States for the district of Kansas, this 4th day of November, in the year of our Lord one thousand eight hundred and ninety-seven.

AMOS M. THAYER,
United States Circuit Judge.

I hereby, this 6th day of November, A. D. 1897, accept due personal service of the above and foregoing citation on behalf of Louis C. Boyle, as attorney general of the State of Kansas.

L. C. BOYLE,
As Attorney General of the State of Kansas.

a 1 [Endorsed:] Nos. 7427 & 7453. U. S. circuit court. Charles U. Cotting and Francis Lee Higginson *v.* Louis C. Boyle *et al.* Citation and acceptance of service thereof. Filed Nov. 6, 1897. Geo. F. Sharitt, clerk.

1 UNITED STATES OF AMERICA, *District of Kansas,* } *ss:*

In the Circuit Court of the United States for the District of Kansas, First Division.

CHARLES U. COTTING, Complainant, *against* KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants.	No. 7427. In Equity.

To the honorable judges of the circuit court of the United States for the district of Kansas, first division:

Charles U. Cotting, a resident and citizen of the State of Massachusetts and a stockholder of the Kansas City Stock Yards Com-

pany, on his own behalf and on behalf of other stockholders of the Kansas City Stock Yards Company having like interest herein and similarly situated who may hereafter join in the prosecution of the suit and become parties herein and contribute to the expenses hereof, brings this his bill in equity against the Kansas City Stock Yards Company, a corporation duly created, organized, and existing under the laws of the State of Kansas and a resident and citizen of the State of Kansas and of the first division of the said district, having its principal office and place of business in this State, at the city of Kansas City, in this State; Charles F. Morse, a director, vice-president, and general manager of the Kansas City Stock Yards Company, and also the managing director of said corporation, and also at the present time, in consequence of the absence of the president of said corporation in Europe, the acting president thereof, and a resident and citizen of the State of Missouri; Harry P. Child, the assistant general manager of the Kansas City Stock Yards Company, and a resident and citizen of the State of Missouri; Eugene Rust, the general superintendent of the Kansas City Stock Yards Company, and a resident and citizen of the State of Missouri;

Elliott E. Richardson, the secretary of said Kansas City Stock
2 Yards Company, and a resident and citizen of the State of Kansas and of the first division of said district; and Louis C. Boyle, as attorney general of the State of Kansas, being the duly elected, qualified, and acting attorney general of the said State of Kansas, and a resident and citizen thereof and an inhabitant of the first division of said district; and thereupon your orator complains and alleges:

I.

That your orator, Charles U. Cotting, is a resident and citizen of the State of Massachusetts, and is a stockholder in the Kansas City Stock Yards Company, being the owner and in the possession of 250 shares of the capital stock of said corporation, which said shares of stock so held, owned, and possessed by him are of the full value of more than five thousand ($5,000) dollars, to wit, of the value of thirty thousand ($30,000) dollars; that your orator invested in and became the owner of said stock in the said corporation for a valuable consideration, to earn and obtain thereon a reasonable and a fair dividend or rate of interest on the actual value thereof; that since your orator became the owner and holder of said stock, up to this time, the said corporation has been so economically and successfully operated and managed as to produce some profit to your orator and to the other stockholders of said corporation who have invested their money in said coporation and in the stock thereof; that your orator is entitled to demand and require that the said corporation shall continue to carry on its business in the future, as in the past, so that the said corporation, if possible, shall earn a reasonable and fair dividend or interest on the present actual value of its property, so that your orator as a stockholder therein shall receive some compensation for the use of his money and property invested in said corporation and in the stock thereof without prejudice to the rights

of others, and for this purpose and to this end your orator is entitled to demand of the said Kansas City Stock Yards Company and the officers and agents thereof that the said company shall prescribe, exact, and collect such just and reasonable rates, charges, and compensation from persons doing business with it or making
3 purchases of hay, corn, or other property therefrom as that said corporation shall earn a fair and reasonable compensation or interest on the present actual value of its property, if it be possible so to do, in the lawful transaction of its business; that the amount involved in this suit and the matter in dispute exceeds, exclusive of interest and costs, the sum and value of two thousand dollars, and the damages and losses which will accrue to your complainant if the so-called act hereinafter referred to shall be enforced in any respect will largely exceed, exclusive of interest and costs, the sum and value of two thousand dollars.

II.

That The Kansas City Stock Yards Company, defendant, is and for more than twenty years last past has been a corporation duly created, organized, and existing under the laws of the State of Kansas, and a citizen and resident thereof and of the first division of said district, with power to construct, maintain, and operate stock yards in this State and in the State of Missouri, and to own real estate for that purpose, with authority also to erect and maintain buildings, hotels, railways, switches, yards, pens, and such other improvements as may be necessary for its purposes, and also with authority for receiving, shipping, yarding, feeding, and otherwise caring for horses, mules, cattle, and other stock at its yards in Kansas City, Kansas, and in Kansas City, Missouri, with the right of demanding, exacting, and collecting for its services performed and for its property sold to others fair compensation, and also such prices therefor as might be agreed upon by the parties interested; that the yards occupied by it in carrying on its business consist of about one hundred and sixty acres, about one hundred and twenty acres of which are situated in this State and about forty acres thereof in the State of Missouri; that about sixty-five per cent. of the earnings of said corporation are derived from its business carried on in this State, and that about thirty-five per cent. thereof is derived from its business carried on in the State of Missouri; that for a very large part of this real estate the said corporation was compelled to pay large prices therefor, because it was absolutely necessary for its use to suc-
4 cessfully carry on its business, and because the same was at the time of purchase occupied by a good class of buildings, which it was necessary to remove, and the land so formerly occupied by such buildings is now being used entirely for stock-yards purposes; that the improvements at the stock yards, consisting of buildings, railroad, tracks, switches, viaducts, pens, and other improvements, are very extensive and maintained in a superior condition, the cattle pens alone covering about eighty acres, all of them

either floored with plank or paved with vitrified brick; that the corporation has hog sheds with a daily capacity of thirty thousand hogs, and sheep sheds with a daily capacity of twenty thousand sheep, and also stables for about four thousand horses and mules; that during the past five years the capacity of the yards of the corporation has been, to meet the growing demands of business, almost doubled, at a large expenditure of money; that the authorized capital stock of said corporation is seven million five hundred thousand ($7,500,000) dollars, of which $7,368,650.00, on December 31, 1896, has been issued, and all of which is paid up; that the present actual value of the property of said corporation so employed for its stock yards, as aforesaid, is in excess of the value of seven million five hundred thousand ($7,500,000) dollars; that for the year 1896 the total receipts of stock at said stock yards were as follows, to wit:

1,714,532 cattle,
100,166 calves,
993,126 sheep,
2,605,575 hogs,
57,847 horses and mules,

making a total of all stock handled by said yards of 5,471,446; that the gross earnings of the corporation for the year 1896 were one million twenty-three thousand eight hundred and seventy and $\frac{20}{100}$ dollars ($1,023,870.20); that the total expenditures were five hundred and forty-nine thousand three hundred and fifty one and $\frac{80}{100}$ ($549,351.80) dollars, all of which were necessary for the operation and maintenance of the property, leaving net earnings of four hundred and seventy-four thousand five hundred and eighteen and $\frac{40}{100}$ ($474,518.40) dollars, about six per centum on the capital stock of the corporation for that year; that the yards, pens, and most of the improvements of said stock yards have to be necessarily replaced or renewed about every five to seven years, costing large sums of money therefor and consuming a large amount of the yearly earnings of the said corporation; that the charges now prescribed, exacted, and collected by the corporation, and which have existed for several years, are as follows, to wit:

For driving, yarding, watering, and weighing cattle, twenty-five cents per head; calves, ten cents per head; hogs, eight cents per head, and sheep, five cents per head; that such charges and prices are fair, reasonable, and just, considering all conditions and the services rendered therefor, and only furnish reasonable compensation to the said defendant corporation; that all existing charges and prices of the corporation for hay, corn, and other grain sold or delivered by it under the conditions and circumstances in which the same are sold and delivered and fed, and the care and attention given by the corporation to cattle and other stock in its yards in connection with the sale, delivery, and feeding of hay, corn, and other grain, are fair, just, and reasonable, and the operation of the stock yards, under such rates, charges, and prices, and the collection thereof, only permit the corporation to earn a fair and reasonable compensation or interest on the present actual value of its property so necessarily occupied and used by it for stock-yards busi-

ness, and such earnings are about six per centum per annum on the money invested in said corporation after paying the operating expenses thereof, taxes, and the expenses of the necessary repairs, renewals, and the maintenance of the same; that the charges for yardage and fees at the stock yards of the said corporation are the same as those of other stock yards similarly conducted, and the same as the stock yards at St. Louis, Missouri, East St. Louis, and Chicago, Illinois, and Omaha, Nebraska; that said defendant corporation makes no charges whatever on any stock that is not sold in the yards when received from railroad companies, and said stock is subject to the order of the owner and is delivered to the railroads or buyers without charge to the owner; that said stock yards so owned and operated by said corporation have been and are of great pecuniary value and benefit to the stock raisers and shippers of Kansas, Missouri, and
6 adjacent States; that the location and operation of the stock yards of said corporation in this State and in Kansas City, Missouri, have induced large packing establishments to locate in Kansas City, Kansas, for the purpose of buying, killing, and packing cattle and other stock, thereby furnishing an excellent and convenient market to the stock raisers and shippers of Kansas, Missouri, and adjacent States; that fat cattle sold in Kansas City in 1896 netted an average of nine and three-fourth cents per hundred pounds more than the same stock sold in Chicago the same day, and that hogs netted nine cents more, and sheep seventeen cents more, and that the importance of the stock market at Kansas City to the producers, stock raisers, and shippers of Kansas has been greatly increased by the successful operation of the large and extensive stock yards of said corporation at and near Kansas City, Kansas, and at and near Kansas City, Missouri.

III.

That Charles F. Morse, defendant, is a director, vice-president, and general manager of the Kansas City Stock Yards Company, and the only managing director thereof, and at the present time, in consequence of the absence of the president of said corporation in Europe, is also the acting president thereof, and has full authority to fix the rates and prices to be charged by said stock yards company, and is a resident and citizen of the State of Missouri; that Harry P. Child is the assistant general manager of said corporation and a citizen and resident of the State of Missouri; that Eugene Rust, defendant, is the general superintendent of said corporation and a resident and citizen of the State of Missouri; that Elliott E. Richardson is the secretary of said corporation and a resident and citizen of the State of Kansas and of the first division of said district, and that Louis C. Boyle, as attorney general of the State of Kansas, is a citizen and resident of the State of Kansas and an inhabitant of the first division of said district, and the duly elected, qualified, and acting attorney general of said State.

IV.

That on the third day of March, 1897, Honorable John W. Leedy, as governor of the State of Kansas, approved a certain so-
7 called act of the legislature of said State, known as "Committee substitute for house bill No. 87," and entitled "An act defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating the charges thereof, and removing restrictions in the trade of dead animals, and prescribing penalties for the violations of this act;" that in the said so-called act it was provided the same should take effect and be in force from and after its publication in the official State paper of the State of Kansas; that a certified copy of the said so-called act is hereto attached, marked Exhibit "A," and made a part of this bill of complaint, to which reference is hereby made as if fully incorporated herein; that the said so-called act was published in the official State paper of the State on the 12th day of March, A. D. 1897; that the said so-called act is now, by the said defendant, Louis C. Boyle, as attorney general of the State of Kansas, alleged to be in full force, virtue, and effect as a valid law of the State of Kansas, the said so-called act providing, among other things, that "it shall be the duty of the attorney general to prosecute all violations of the provisions thereof."

V.

That the said so-called act, approved March 3d, 1897, and heretofore referred to as Exhibit "A," is unconstitutional and void in this, to wit, that under the provisions of the Constitution of the United States, and particularly under the third clause of section 8, article 1, and of article 8, and of the fifth and the fourteenth amendments thereof, neither the legislature of the State of Kansas nor the State of Kansas has power to enact or enforce the so-called act or any of the provisions thereof, so as to include or apply to the Kansas City Stock Yards Company, nor any legislative power or other authority to define the duties of the said corporation in carrying on and operating its business, or any legislative power or other authority to regulate the charges of said corporation for services rendered by it to stock-shippers or other persons, or any legislative power or other authority to abridge in any manner its rights, privileges, and immunities, as it is attempted to do by the said so-called act, or any legislative power or other authority to prescribe any penalties whatever for the violations of the said so-called act or of any of its provisions.

8 VI.

That the said so-called act approved March 3d, 1897, is unconstitutional and void as contrary to and in conflict with the Constitution of the United States, and especially as contrary to and in conflict with the provisions of the fourteenth amendment thereof, in this, to wit, that it denies to the Kansas City Stock Yard- Company, within the jurisdiction of the State of Kansas, the equal pro-

tection of the laws, in that by its provisions it is made to apply only to such stock yards within the State "into which live stock is received for the purpose of exposing or having the same exposed for sale or feeding and doing business for a compensation, and which for the preceding twelve months shall have had an average daily receipt of not less than one hundred head of cattle or three hundred head of hogs or three hundred head of sheep," in that by such provision it singles the Kansas City Stock Yards Company out of all the other citizens and corporations within the State of Kansas, without giving to such corporation any specific or corresponding benefit therefor, and restricts the application of the said so-called act to the Kansas City Stock Yards Company alone, there being no other stock yards operated in the State of Kansas except the defendant corporation which for the preceding twelve months has "an average daily receipt of not less than one hundred head of cattle or three hundred head of hogs or three hundred head of sheep;" that while the said so-called act in controversy does not specifically name the Kansas City Stock Yards Company, it so describes it that there can be no possible doubt with regard to the attempted exclusive application of the said so-called act to said defendant corporation, and this is substantially the same as naming the said corporation in the said so-called act; that the said so-called act not only attempts to fix the charges of said corporation for driving, yarding, watering, and weighing stock, but also attempts to fix the prices at which it may sell and deliver hay, corn, and other grain, and therefore said corporation is not treated as other owners and operators of stock yards within the State are treated which for the preceding twelve months have a less "average daily capacity than one hundred head of cattle or three hundred
9 head of hogs or three hundred head of sheep," nor is it treated as other corporation- or persons are treated who are engaged in selling and trading in personal property, nor is it treated equally with such other corporations or persons; that the said so-called act is strictly class legislation, arbitrarily made and enacted to discriminate against the defendant corporation and your orator and other stockholders of said corporation, and prevents such corporation from being treated as other stock yards corporations are treated and as other corporations and persons are treated engaged in similar business in the State under like conditions and circumstances.

VII.

That the said so-called act approved March 3d, 1897, is unconstitutional and void as contrary to and in conflict with the provisions of the Constitution of the United States, and especially as contrary to and in conflict with the provisions of the fifth and fourteenth amendments thereof, in this, to wit, that thereby the State of Kansas is attempting to deprive the Kansas City Stock Yards Company and your orator as a stockholder therein of liberty and property without due process of law and without just compensation therefor; that said defendant corporation is entitled, if it can do so in the

operation of its business, to earn a fair and reasonable compensation or interest yearly on the present actual value of its property, which said present actual value thereof exceeds the sum of seven million five hundred thousand dollars, and if the said so-called act is or shall be applied to all the business of said corporation and its provisions thereof shall be enforced against said defendant, its officers, agents, and servants, then the legislature of the State of Kansas and said State have unlawfully assumed the right and illegally attempt to exercise the right to reduce the rates and charges of said corporation for the driving, yarding, watering, and weighing of cattle in this State, and also abridging, restricting, and limiting said corporation in the prices at which it may sell and deliver hay, corn, and other grain, so as to diminish and reduce its charges, rates, revenues, and earnings in such a manner and to such an extent as to prevent it and your orator and the other stockholders therein from earning, receiving, or obtaining a reasonable per cent. for the money invested in said corporation and preventing said corporation and your orator and the other stockholders therein from earning, receiving, or obtaining a reasonable or fair compensation, interest, or dividend upon the present actual value of the property of said corporation; that the enforcement of the provisions of the said so-called act against defendant corporation will reduce the receipts of said corporation yearly to the amount of over three hundred and nine thousand ($309,000) dollars, which reduction, with the necessary and continuing costs of renewal of its yards, pens, and other improvements, will leave no fair and reasonable compensation to the said corporation nor any dividends or interest or compensation to your orator or to the other stockholders therein, and will destroy the value of the stock of your orator and the stock of the other stockholders of said corporation and the value of the property of said corporation and render the same worthless, and if said so called act is enforced against said corporation, it deprives said corporation and all the stockholders therein, including your orator, of their property as completely as by a special act expressly providing for its depreciation, confiscation, and destruction.

VIII.

That the said so-called act approved March 3d, 1897, is unconstitutional and void as contrary to and in conflict with the provisions of the Constitution of the United States and of the State of Kansas, and especially as contrary to and in conflict with the provisions of article 5 of the original amendments to the Constitution of the United States and in conflict with the provisions of section 9 of the bill of rights of the constitution of Kansas, in this, to wit, that said so-called act permits the infliction of cruel and unusual punishments; that the last clause of section 7 of the said so-called act provides that any person or persons violating the provisions thereof shall be deemed guilty of a misdemeanor, and upon conviction therefor, "for each subsequent offense, he or they shall be fined in

any sum not less than one thousand dollars and by imprisonment in the county jail not less than six months;" but the maximum fine and imprisonment is not fixed, thereby permitting fines for each subsequent offense therein referred to to be of any amount exceeding one thousand dollars and the infliction of imprisonment for any period of time exceeding six months, thereby authorizing and requiring the infliction for each subsequent offense referred to of excessive and unusual fines and of cruel and unusual punishments, such fines and imprisonment being wholly unlimited; that said last clause of section 7 of said so-called act is also unconstitutional and void, in this, to wit, that it is contrary to the provisions of the Constitution of the United States, in that it leaves to judicial discretion, without any limitation, the infliction of punishments for each subsequent offense therein referred to by excessive fines and cruel and unusual punishments.

IX.

That the said so-called act approved March 3d, 1897, is unconstitutional and void as contrary to and in conflict with the provisions of the Constitution of the United States, and especially as contrary to and in conflict with the provisions of the fifth and fourteenth amendments thereof, because it is an illegal effort to interfere with the lawful rights, powers, and privileges of the defendant corporation having the right and power to seek and obtain such compensation as it properly can for the use of its own property and the sale of proper articles, and is also an illegal effort to interfere with and abridge the lawful rights, powers, privileges, and immunities of your orator and the other stockholders of defendant corporation, who are seeking and trying to obtain by having invested in said stock such compensation as they legally can for the use of their own money and property, and therefore said so-called act is nothing else than an effort of the legislature of the State and of the State of Kansas to regulate the private business of a private corporation and of private individuals, and to limit, abridge, and destroy the compensation which the said corporation may legally exact and collect for the use of its own property and for its stockholders, and said so-called act and the provisions thereof have not been and are not now exercised and are not proposed to be exercised by said State in any matter involving the public health or the public morals or of any other legitimate police power.

X.

That the said so-called act approved March 3d, 1897, and all of the various sections thereof are unconstitutional and void as contrary to and in conflict with the third clause of section 8, article 1, of the Constitution of the United States, which confers upon Congress power to regulate commerce with foreign nations and among the several States, and the several acts of Congress passed in pursuance thereof, in this, to wit:

That the said Kansas City Stock Yards Company, defendant,

owns and operates extensive and costly stock yards, as aforesaid, in the county of Wyandotte and State of Kansas, in the vicinity of the mouth of the Kansas river, in and near to what is known as Kansas City, Kansas, and in Jackson county, in the State of Missouri, and in and near to what is known as Kansas City, Missouri, and said yards in both States have all the usual and necessary conveniences for the reception, driving, feeding, and shipment of cattle and other stock, and in carrying on its business and operating its yards it receives almost daily, not only from this State and from the State of Missouri, but also from Texas, Colorado, Nebraska, and 23 other States and Territories, great numbers of cattle and other stock, which are transported by the railroads to the said defendant corporation for care, feeding, and shipment in this State and Missouri, and when so transported by the railroads of the several States and Territories to the yards of the defendant corporation in this State and in the State of Missouri they are yarded, fed, cared for, sold, and shipped; that the yards in the State of Kansas and Missouri are so connected and carried on that the cattle and other stock go from one State to the other in the said yards, and are driven to and from the said yards in both States as the business of the stock raiser and shipper demands and as the rules and regulations of the stock yards company require; that very frequently cattle so received from the States of Missouri and Kansas, and also from the other States aforesaid, are shipped from the yards of defendant to Chicago, in the State of Illinois, and also to other cities and States
13 outside of the States of Kansas and Missouri; that the said business of the said corporation is not carried on exclusively within the limits of the State of Kansas, but, as aforesaid stated, also within the State of Missouri and other States; that the said yards, railroad tracks and switches, and other property of the said corporation are a part of commerce itself, are necessarily connected with interstate commerce, and that the said defendant is engaged in interstate commerce, and the provisions of the said so-called act affect commerce and amount to a regulation of it within the meaning of the Constitution of the United States, and therefore the provisions of the said so-called act belong to that class of powers which cannot be exercised by the legislature of Kansas or by the State itself or by any other State of the Union.

11.

That the said so-called act approved March 3d, 1897, and all of the various sections thereof are contrary to and in conflict with the provisions of an act of Congress approved May 29th, 1884, entitled "An act for the establishment of a bureau of animal industry, to prevent the exportation of diseased cattle, and to provide means for the suppression and extirpation of pleuro-pneumonia and other contagious diseases among domestic animals," and of an act of Congress approved August 8, 1894, making appropriation for the Department of Agriculture for the fiscal year ending June 30th, 1895, and the regulations concerning cattle transportation, made and promulgated in accordance with the provisions of said acts of Con

gress aforesaid by the Secretary of the United States Department of Agriculture, at his office, in Washington, District of Columbia, on January 27th, 1896, in this, to wit:

That under the provisions of section 4 of said so-called act, referred to herein as "Exhibit A," it is expressly provided that "there shall be but one yardage charged;" and it is further provided therein that "for driving, yarding, watering, and w-ighing of cattle fifteen cents per head" may only be charged, demanded, and collected by the defendant corporation for doing such service in the State of Kansas; that under the said regulations concerning cattle transportation, so made and published, as aforesaid, by the Secretary of the United States Department
14 of Agriculture, places, pens, and grounds are specially set apart by the defendant corporation, in the county of Wyandotte and State of Kansas, in the vicinity of the mouth of the Kansas river, consisting of about forty (40) acres of land, called "quarantine grounds," where cattle transported by rail to the defendant corporation between the 15th day of February and the 15th day of November of each and every year from the area south of or below the Federal quarantine line, legally established and designated under the acts of Congress aforesaid, are unloaded to be fed, watered, cared for, and sold for slaughter or shipped therefrom, as provided by the said regulations of the United States Department of Agriculture; that large numbers of cattle are so transported yearly to and unloaded in said places, pens, and grounds so set apart by the defendant corporation, in accordance with said regulations concerning said cattle so transported; that such cattle must be placed in separate yards, pens, and grounds, and no other cattle admitted thereto; that the same must be kept carefully cleansed and disinfected, at great cost, as provided by the regulations concerning such cattle so transported; that to water, feed, and take care of cattle and other stock in the places, pens, and grounds so kept by the defendant corporation for quarantine purposes the prices fixed in section 4 of said so-called act, referred to herein as "Exhibit A," are wholly insufficient and not compensatory for the service, attention, and yardage absolutely necessary to comply with the said regulations aforesaid; and if the said defendant corporation is restricted to the maximum prices fixed in said section 4 of the said so-called act, then said cattle so transported by rail from said area south of or below said Federal quarantine line cannot be properly fed, watered, cared for, and yarded by the defendant corporation in accordance with the requirements of said regulations, as aforesaid stated, and therefore, on account of the maximum charges and prices fixed in said section 4 of said so-called act to be collected for yardage, and the prices to be charged under section 5 of said so-called act for hay, corn, and other grain, if enforced against the said corporation, it might be compelled to refuse to permit said cattle to be unloaded for feed, water, care, attention, yardage, sale, and shipment, as aforesaid,
15 in its special pens, places, and grounds so set apart for the reception of said cattle, and the provisions of said so-called act therefore interfere with the carrying out of the regulations aforesaid

concerning said cattle transportation and the acts of Congress aforesaid, and will deprive the said defendant corporation and your orator and the other stockholders of said corporation from obtaining reasonable, fair, and just compensation for the yardage and feeding of said cattle so transported through the State of Kansas from the area south of and below the Federal quarantine line aforesaid, and will also prevent and forbid the owners and shippers of such cattle from having sufficient, convenient, and proper quarantine grounds in the county of Wyandotte, State of Kansas, where their said cattle can be fed, watered, cared for, sold, or shipped in accordance with the said regulations concerning such cattle transportation.

12.

That by said section 8 of said so-called act, referred to herein as "Exhibit A," it is made the duty of the said Louis C. Boyle, as attorney general of the State of Kansas, to prosecute all of the violations of the provisions of said act; that your orator fears that the said attorney general may cause the defendant corporation and any and all of its officers and agents who shall violate any of its provisions to be arrested and prosecuted; that he will attempt to enforce said so-called act through the courts of Wyandotte county, Kansas, and through the courts of the State of Kansas by a multiplicity of criminal actions or proceedings against each and every person failing or refusing to comply with the provisions thereof, including the said defendant corporation and its officers and agents, thereby greatly harassing and annoying the said defendant corporation and its officers and agents and causing them great expense and consuming valuable time, unless the said defendant corporation, its officers and agents, shall put in force at once the said charges and prices specified in said sections 4 and 5 of said so-called act, and shall obey and carry out all of the terms and provisions of said act and each
16 section thereof; and your orator fears that the said Louis C. Boyle, as attorney general, will proceed at once to carry into force said arrests and prosecutions unless immediately restrained by the order and injunction of this honorable court.

13.

That heretofore, to wit, on the 12th day of March, A. D. 1897, the Kansas City Stock Yards Company, and also Charles F. Morse, a director, vice-president, and general manager of said corporation, and also at present the acting president of said corporation, and being the only managing director hereof, on account of the passage of said so-called act by the legislature of the State of Kansas and the heavy penalties therein provided, and the fear that said Louis C. Boyle, as attorney general aforesaid, will at once proceed to arrest and prosecute said corporation and its officers and employés, and to save the defendant corporation, its officers, agents, servants, and employés, from being so arrested, harassed, and annoyed by the said Louis C. Boyle, as attorney general, in attempting to enforce the provisions of said so-called act, notwithstanding the invalidity of said act, informed your orator, as such stockholder, as aforesaid,

that the provisions of the said so-called act would be applied by the defendant corporation, its officers and agents, to the operation of its yards in the State of Kansas, and that all the provisions therein contained concerning charges for yardage or otherwise, and all the prices for the sale and delivery of hay, corn, and other grain therein fixed would be observed and carried out in the State of Kansas, and that said so-called act and all the terms thereof would be observed and obeyed by the said defendant corporation, its officers and agents, and also informed your orator that on the 13th day of March, 1897, the prices fixed in said section 4 of said so-called act would be at once ordered and put in force in the operation of the yards and property of said defendant corporation in the State of Kansas, and that no greater prices would be demanded, exacted, or collected for driving, yarding, watering, and weighing cattle and other stock than as therein specified, and also that said defendant corporation, its officers and agents, would sell and deliver in the State of Kansas, at the prices fixed in said section 5 of said so-called act, hay, corn, and other grain at the prices, terms, and
17 weight specified in said section 5 of the said so-called act, and also would in all other ways comply with the provisions of the said act, because of the heavy fines and penalties therein provided, and because of the fear of arrests and prosecutions, as hereinbefore alleged, notwithstanding the invalidity of such act.

14.

That heretofore, on the 12th day of March, 1897, your orator, as a stockholder of said defendant corporation and as interested in the economical and successful management of the business of said corporation, and who was then and there a stockholder and shareholder at the time of the transactions complained of, desiring to secure on the part of the managing director of said defendant corporation a revocation of said order and directions of said defendant corporation and of its said acting president and sole managing director to put in force the provisions of said act aforesaid, did serve a notice in writing upon said defendant corporation and Charles F. Morse, as the acting president and managing director of said corporation, demanding that said orders and directions aforesaid to put in force the said so-called act and all of its provisions in the operation of the stock yards and property of said defendant corporation be revoked and set aside upon the ground that the said so-called act is unconstitutional and void, and also demanding that the said defendant corporation and the said managing director aforesaid should continue to exact, receive, and collect the rates and prices now existing in the operation of the business of the said defendant corporation far driving, yarding, watering, and weighing stock, and also in selling and delivering hay, corn, and other grain, so that its property would yield some compensation for services performed, sales made, and the business carried on.

And your orator alleges that said defendant corporation and the said Charles F. Morse, acting president and sole managing director, as aforesaid, have each refused to comply with the request of your

orator and wholly disregard the same, and your orator hoped
18 that the said defendant corporation and the said Charles F. Morse, as its acting president and as its sole managing director, and the other officers and agents of said corporation, would have complied with the reasonable request of your orator, as in justice and equity the said defendant corporation and its officers and agents should have done, but now so it is that the said defendant corporation and the said Charles F. Morse, as such acting president and as such sole managing director, and the other officers and agents of said defendant corporation, under his control and direction, to the great wrong and injury of your orator in the premises, absolutely refuse to comply with such reasonable and proper request.

And your orator further says that the cause of the failure of your orator to obtain a revocation of said order and directions of the said defendant corporation and of the said Charles F. Morse as a director, vice-president, and general manager, and as the acting president of said corporation, and as the sole managing director thereof is as herein stated; that the said defendant corporation and the said Charles F. Morse, as such officer aforesaid, notwithstanding the invalidity of the so called act of the legislature of the State of Kansas, referred to as "Exhibit A," are in fear of the annoyance, harassment, humiliation, and expense to which the said defendant corporation and the said Morse and the other officers, agents, servants, and employés of said corporation will be immediately subjected under the so-called act herein referred to, and especially so if its provisions are attempted to be enforced by Louis C. Boyle, as attorney general, as is now proposed and threatened by him, as aforesaid stated, or any other officer of the State of Kansas, and therefore the said defendant and the said Charles F. Morse, as officer of said corporation, absolutely refuse to secure to your orator such action or any action as he has demanded and desires on the part of and from the said corporation and of and from the managing directors thereof.

And your orator further says that this suit is not a collusive one with the defendants or any other person or party to confer on the above entitled court of the United States jurisdiction of a
19 case which it would not otherwise have cognizance of, but your orator alleges that such suit is brought in good faith for the protection of his own interests in the defendant corporation and to prevent his said stock and his property therein from being depreciated, lost, and destroyed in violation of law and the provisions of the Constitution of the United States, as aforesaid.

15.

And your orator says that, as before stated, the enforcement of the provisions of said so-called act against the defendant corporation and its officers and agents and the observance of the provisions of said so-called act fixing a maximum charge to be made by said defendant corporation for services rendered, accommodations furnished, and hay, corn, and other grain sold by the said defendant

corporation, as is now proposed and threatened to be done by them, will deprive the defendant corporation of the power of exacting reasonable and fair compensatory rates for yardage and other services rendered and for hay, corn, and other grain sold in its yards, and will deprive it of the use of its property and, in effect, of the property itself without the due process of law; and if the said defendant corporation and its officers and agents are allowed to put in force the maximum rates and prices aforesaid specified in said so-called act your orator and the other stockholders of said defendant corporation will be unable to secure a reasonable per cent. on their money invested in said corporation and in the stock and property thereof, and will be unable from the earnings of said defendant corporation to obtain any reasonable and fair compensation, dividend, or interest on the actual value of their said stock, as the said defendant corporation cannot, under such maximum rates, charges, and prices, earn any reasonable or fair compensation, interest, or dividend on the present actual value of its property.

And your orator says that he has the right to demand of the said defendant corporation and of the said Charles F. Morse, as acting president and sole managing director thereof, that the business of said corporation shall be carefully, properly, economically, and successfully managed, as heretofore it has been done, and that such reasonable rates and compensation shall be exacted, demanded, and collected for services rendered, accommodations furnished, and for the hay, corn, and other grain sold by said defendant corporation, so that the said corporation may earn reasonable and fair compensation, interest, or dividends on the present actual value of its property, and if said corporation continues in force its present existing rates, charges, and prices it can and will earn reasonable and fair compensation, interest, and dividends on the present actual value of its property which can be properly divided among the stockholders of said corporation, including your orator.

And your orator further says he fears that if such destructive maximum rates, charges, and prices are put in force, as aforesaid, your orator and the other stockholders of said defendant corporation will suffer great and irreparable injury, for which damages at law would be no adequate remedy, and said defendant corporation and the officers and agents thereof will carry out their said orders and directions aforesaid unless restrained at once by the order and injunction of this honorable court.

In consideration whereof and forasmuch as your orator is remediless in the premises at and by the strict rules of the common law and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable, therefore your orator prays the decree of this honorable court adjudging that it is the duty of the said defendant corporation and the said Charles F. Morse, acting president, general manager, and sole managing director of said defendant corporation, for the benefit of said corporation and of your orator and the other stockholders of said corporation, to revoke at once the orders and directions to put into force the provisions of said so-called act, referred to herein as "Exhibit

A," and the maximum charges and prices therein specified, and that it is the duty of said defendant corporation and the said Charles F. Morse, acting president, general manager, and sole managing director, for the pecuniary benefit of your orator and the other stockholders of said defendant corporation, to maintain and operate the stock yards of said defendant corporation herein named in the same manner as they have been heretofore economically and successfully operated, and to charge for the services to be fur-
21 nished for yardage and other matters the present existing charges (which are fair, reasonable, and just), and also to sell and deliver hay, corn, and other grain to stock raisers, shippers, and other persons upon the same terms and for the same prices and in the same way such articles are now sold by said defendant corporation (which said prices, under all the circumstances and conditions, are fair, reasonable, and just), and that said defendant corporation and each of its said officers and agents named as defendants herein shall be enjoined from obeying, observing, or putting into force any of the provisions of said so-called act, and that said order and injunction issue against said defendant corporation and the said Charles F. Morse, as acting president and sole managing director thereof, and each of the other officers and agents of said defendant corporation made parties defendant herein, commanding them and each of them to refrain from putting into force the provisions of the said so-called act or any part thereof.

That the said Louis C. Boyle, as attorney general, be adjudged and decreed from attempting, as against said defendant corporation or any of its officers, agents, servants, or employés, to enforce the provisions of the said so called act or any part thereof, and also that said order and injunction issue against the said Louis C. Boyle, as attorney general, commanding him to refrain from harassing and annoying by prosecution or otherwise, under the provisions of the said so-called act, the defendant corporation, the said Charles F. Morse, or any of the other officers, servants, agents, or employés of the said defendant corporation herein named.

That the final mandatory order and injunction of this court in this case issue, compelling said defendant corporation and the said Charles F. Morse and each of the other officers and agents of said defendant corporation herein named to operate and maintain the said stock yards of the said defendant corporation in the State of Kansas as they are now operated and maintained, and that they exact and collect the same charges for services performed and the same prices now demanded and received, wholly disregarding the said so-called act and all of the provisions thereof.

22 That a final order, judgment, and decree issue that the said so-called act approved March 3rd, 1897, herein referred to as "Exhibit A" and made a part of this bill of complaint, is unconstitutional and void and of no validity, force, or effect whatever, and that all of said defendants and each of them be enjoined from enforcing or attempting to enforce the said so-called act or any of the provisions thereof.

That a preliminary injunction may issue at once, upon the filing

of this bill of complaint, against the said defendant corporation and each of its officers and agents named as defendants herein, during the pendency of this suit, strictly commanding and enjoining the said defendants and each of them, under the pains and penalties which may fall upon them and each of them in case of disobedience, that they forthwith and until the further order, judgment, and decree of this court desist from putting into force the said maximum rates, charges, and prices specified in said so-called act aforesaid, and against the said Louis C. Boyle, as attorney general, commanding and enjoining him to desist from enforcing or attempting to enforce the said so-called act against said defendant corporation and its officers and agents named as defendants herein, by arrest or otherwise, through the courts of the State or otherwise.

For, in so much as your orator is without relief in a court of law, may it please this honorable court to grant unto your orator a writ of subpœna, to be directed to the Kansas City Stock Yards Company, a corporation; Charles F. Morse, as director, general manager, acting president, and sole managing director of the said Kansas City Stock Yards Company; Harry P. Child, as the assistant general manager of the said corporation; Eugene Rust, as the general superintendent of the said corporation; Elliott E. Richardson, as the secretary of the said corporation, and Louis C. Boyle, as attorney general of the State of Kansas, commanding them and each of them, at a certain date and under the pain and penalty therein mentioned, personally to be and appear before this honorable court, then and there full and true, direct and perfect, answer to make to all and singular the premises (but not under oath, answer under oath being hereby expressly waived); and, further, to stand
23 to and abide by such further order and direction herein as to this honorable court may seem just; and for such further and other order and direction herein as in equity and good conscience your orator may be entitled to, though not specifically prayed herein.

And your orator will ever pray.

CHARLES U. COTTING,
By C. J. HUBBARD, *Authorized Agent.*
WAGGENER, HORTON & ORR,
Solicitors for the Complainant.
ALBERT H. HORTON, *Of Counsel.*

24 UNITED STATES OF AMERICA, }
First Division of District of Kansas, } *ss:*

On this 13th day of March, A. D. 1897, before me personally appeared C. J. Hubbard, of Kansas City, Missouri, being of lawful age, who made solemn oath that he was the duly authorized agent of the said Charles U. Cotting, the above-named complainant, to file the foregoing bill in the United States circuit court in and for the district of Kansas and in the first division thereof, and to employ solicitors and counsel for the said Charles U. Cotting, complainant, for that purpose, and to attend for said Charles U. Cotting, com-

plainant, to the prosecution of said suit and the proceedings thereof; that the said Charles U. Cotting, complainant, does not reside in and is not now within the district of Kansas or the district of Missouri or within any of the judicial districts composing the eighth circuit of the United States, and he further made solemn oath that he had read the foregoing bill of complaint subscribed by the complainant through the affiant as his authorized agent therefor and knows the contents thereof, and that he is personally acquainted with the matters and things alleged in said foregoing bill of complaint, and that the same are true of his own personal knowledge; that at the instance of and under the direction of the said Charles U. Cotting, complainant, he personally made and served in the name of the said Charles U. Cotting, complainant, and for him and as his duly authorized agent therefor the written requests and efforts alleged in said bill of complaint of the said Charles U. Cotting, complainant, to secure the action therein stated as said complainant desired on the part of the managing directors of the Kansas City Stock Yard- Company and also upon said company, and is personally acquainted as the authorized agent of said Charles U. Cotting, complain-t, with the said particular efforts of the said Charles U. Cotting, complainant, to secure the said action, as aforesaid, and of the failure of the said Charles U. Cotting, complainant, to obtain such action on the part of and from the said managing directors of the said defendant corporation and on the part of and from
25 the said defendant corporation itself, and also personally knows of the cause of the failure of said Charles U. Cotting, complainant, to obtain such action, as is fully alleged in the said bill of complaint.

That this suit is not a collusive one on the part of the complainant or on the part of this affiant, his duly authorized agent, to confer on the United States circuit court for the district of Kansas or on any court of the United States jurisdiction of a case of which it would not otherwise have cognizance.

And further this affiant saith not.

C. J. HUBBARD.

Subscribed and sworn to before me this 13th day of March, A. D. 1897.

[SEAL.] GEO. F. SHARITT, *Clerk.*

26 EXHIBIT "A."

Committee substitute for house bill No. 87.

An act defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating all charges thereof, and removing restrictions in the trade of dead animals, and prescribing penalties for violations of this act.

Be it enacted by the legislature of the State of Kansas:

SECTION 1. Any stock yards within this State, into which live

stock is received for the purpose of exposing or having the same exposed for sale or feeding, and doing business for a compensation, and which for the preceding twelve months shall have had an average daily receipt of not less than one hundred head of cattle, or three hundred head of hogs, or three hundred head of sheep, are hereby declared to be public stock yards.

SECTION 2. Any person, company or corporation owning or operating any such public stock yard or stock yards in this State is hereby declared to be a public stock yards' operator, whether living or being within this State or not.

SECTION 3. Every such public stock yards' operator or operators shall annually on the 31st day of December of each year, file with the secretary of state, an itemized statement certified and sworn to, setting forth the number of head of cattle, calves, sheep, hogs, horses, and mules received in his or their public stock yards during the year next preceding.

SECTION 4. It shall be unlawful for the owners, proprietors, or the employees of the owners or proprietors of any such public stock yards within this State, to charge for driving, yarding, watering, and -eighing of stock, greater prices than the following, For driving, yarding, watering and weighing of cattle, 15 cents per head; calves 8 cents per head; hogs 6 cents per head; sheep 4 cents per head; and there shall be but one yardage charged.

SECTION 5. It shall be unlawful for the owner, owners or proprietors, or their employés, of any such stock yards within this State, to sell and deliver at the rate of less than two thousand
27 pounds for a ton of hay, or any part thereof, the same to be of good quality, or to charge for or to sell the same at more than one hundred per cent. above the average market price, or value of such hay upon the markets of the towns or cities wherein such stock yards are located, upon the day preceding such sale and delivery; and it shall also be unlawful for any such owners, or proprietors, or employees, to sell and deliver less than seventy pounds of corn in the ear for a bushel, or less than fifty-six pounds of shelled corn for a bushel or to charge for or to sell the same at more than one hundred per cent. above the average market price or value of such ear corn or shelled corn on the markets of the towns or cities wherein said stock yards are located, on the day next preceding such sale and delivery. All feed not above named shall be sold for no greater per cent. of profit than hereinbefore provided.

SECTION 6. It shall be unlawful for the owners or proprietors of any stock yards to prohibit the owner or owners, or the representatives of any owner or owners of any dead stock in such yard or yards from selling such dead stock to any person or persons.

SECTION 7. That any person or persons violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined for the first offense not more than one hundred dollars, for the second offense not less than one hundred dollars nor more than two hundred dollars; and for the third offense not less than two hundred dollars nor more than five

hundred dollars and by imprisonment in the county jail not exceeding six months for each offense; and for each subsequent offense he or they shall be fined in any sum not less than one thousand dollars and by imprisonment in the county jail not less than six months.

SECTION 8. It is hereby made the duty of the attorney general to prosecute all violations of the provisions of this act.

SECTION 9. All acts or parts of acts in conflict with this act are hereby repealed.

SECTION 10. This act shall take effect and be in force from and after its publication in the official State paper.

28 I hereby certify that the above bill originated in the house and passed that body M'ch 1st, 1897.

W. D. STREET,
Speaker of the House.
A. D. GILPIN,
Chief Clerk of the House.

Passed the Senate M'ch 2, 1897.

A. M. HARVEY,
President of the Senate.
M. WATSON,
Secretary of the Senate.

Approved March 3, 1897.

J. W. LEEDY, *Governor.*

STATE OF KANSAS:

OFFICE OF SECRETARY OF STATE.

I, W. E. Bush, secretary of state of the State of Kansas, do hereby certify that the above and foregoing is a correct copy of the original enrolled bill now on file in my office.

In testimony whereof I have hereunto subscribed my name and affixed my official seal this 8 day of March, 1897.

W. E. BUSH,
Secretary of State,
By C. M. ROSS,
Assistant Secretary of State.

[SEAL.]

Endorsed: No. 7427. Charles U. Cotting *vs.* Kansas City Stock Yards Company *et al.* Bill of complaint. Filed M'ch 13, 1897. Geo. F. Sharitt, clerk.

29 UNITED STATES OF AMERICA, } ss:
District of Kansas, }

In the Circuit Court of the United States for the District of Kansas, First Division.

CHARLES U. COTTING, Complainant,
vs.
KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Childs, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants. } No. 7427. In Equity.

Now comes the said Charles U. Cotting, by his solicitors, Waggener, Horton & Orr, and moves the court for a preliminary injunction, as prayed for in the bill of complaint herein, and that the court shall set down the hearing for such preliminary injunction upon a day certain, so that reasonable notice thereof may be given to the defendants and each of them, and also moves the court that, pending the hearing of this matter, *that* said defendant and the said Charles F. Morse, acting president and sole managing director thereof, and the other officers and agents of said defendant corporation be ordered and restrained to desist and refrain obeying and observing or putting into force any of the provisions of the so-called act of the legislature of the State of Kansas defining what shall constitute public stock yards and defining the duties of the persons operating the same and regulating the charges thereof, approved March 2nd, A. D. 1897, a certified copy of which said act is attached to said bill of complaint herein, and also that said Louis C. Boyle, as attorney general of the State of Kansas, or his assistants and agents, be ordered and restrained to desist and refrain from enforcing the provisions of the said so-called act aforesaid, or any
30 part thereof, against the said defendant corporation, its officers, agents, servants, and employés, and from harrassing and annoying by arrest, criminal prosecution, or otherwise the said defendant corporation, its officers, agents, and servants, for disregarding or disobeying said so called act or any of the provisions thereof, and that, pending the hearing of this motion, the said defendant corporation, its officers, agents, and servants, be ordered to continue the operation of said defendant corporation's business the same as it has been heretofore operated and carried on, with the existing charges, rates, and prices exacted and collected prior to the passage of said so-called act of March 2nd, A. D. 1897, and also that the court shall make such further order as shall carry into full force and effect this said restraining order, pending the hearing of this matter in this court.

WAGGENER, HORTON & ORR,
Sol'rs for Complainant.

ALBERT H. HORTON, *Of Counsel.*

(Endorsed:) No. 7427. Charles U. Cotting *vs.* K. C. S. Y. Co. *et al.* Motion. Filed March 13, 1897. Geo. F. Sharitt, clerk.

31 UNITED STATES OF AMERICA, *District of Kansas,* } ss:

In the Circuit Court of the United States for the District of Kansas, First Division.

CHARLES U. COTTING, Complainant,
vs.
KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants. } No. 7427. In Equity.

Whereas Charles U. Cotting has presented his bill of complaint and affidavit in the above-entitled suit, wherein, among other things, he prays that the Kansas City Stock Yards Company; Charles F. Morse, as the general manager, acting president, and sole managing director of said corporation; Harry P. Child, as assistant general manager of said corporation; Eugene Rust, as general superintendent of said corporation, and Elliott E. Richardson, as secretary of said corporation, be commanded, enjoined, and restrained from obeying and observing a so-called act of the legislature of the State of Kansas approved March 3rd, 1897, and known as "Committee substitute for house bill No. 87," and entitled "An act defining what shall constitute public stock yards, defining the duty of the person or persons operating the same, and regulating the charges thereof, and removing restrictions in the trade of dead animals by prescribing penalties for the violation of this act," and from putting into force in the business of said defendant corporation the maximum rates, charges, and prices specified in the so-called act aforesaid; and wherein, among other things, he prays that the said
32 defendant, Louis C. Boyle, as attorney general of the State of Kansas, be enjoined and restrained from enforcing or attempting to enforce the said so-called act or any of the provisions thereof against the said defendant corporation, its officers, agents, servants, and employés, by arrest, criminal prosecution, or otherwise, as more particularly shown in the bill of complaint herein, and that a final injunction issue, commanding said defendant corporation and its officers and agents named as defendants herein to operate and maintain the said defendant corporation and the business thereof as in said bill of complaint prayed:

Now, therefore, it is ordered that the said defendants and each of them show cause before this court, at the city of Topeka, on the 25th day of March, A. D. 1897, at two o'clock p. m. of said day, or as soon thereafter as counsel can be heard, why the prayer of said bill of complaint for a preliminary injunction, as therein prayed for, should not be granted, and why the said defendants and each of them, their officers, assistants, agents, servants, and employés,

should not be enjoined and restrained during the pendency of this suit from obeying, observing, and enforcing the provisions of the so-called act of the legislature of the State of Kansas herein referred to, and why the said complainant should not have the relief prayed for in said bill of complaint; that pending the hearing of this matter the said defendant corporation and Charles F. Morse, as general manager, acting president, and sole managing director of said defendant corporation, and the other officers and agents of said corporation named as defendants herein, be, and they are hereby, ordered and restrained to desist and refrain from obeying, observing, or putting into force, in the operation of the said defendant corporation's business, the maximum rates, charges, and prices specified in said so-called act aforesaid, and the said Louis C. Boyle, as attorney general of the State of Kansas, is hereby ordered and restrained to desist and refrain from enforcing the provisions of said so-called act against the said defendant corporation, its officers,
33–41 agents, servants, and employés, and from arresting or criminally prosecuting in the courts of the State or otherwise the said defendant corporation, its officers, agents, servants, and employés, on account of any non-observance or disobedience of the said so called act or any of its provisions or on account of the failure to fully comply with the terms thereof.

Let a copy of this order, together with a copy of the bill of complaint herein, duly sworn to, be served upon the defendants eight days before the hearing of said matter.

CASSIUS G. FOSTER, *Judge.*

(Endorsed:) No. 7427. Charles U. Cotting *vs.* Kansas City Stock Yards Company *et al.* Restraining order. Filed M'ch 13th, 1897. Geo. F. Sharitt, clerk.

42 UNITED STATES OF AMERICA, *District of Kansas,* } *ss:*

In the Circuit Court of the United States for the District of Kansas, First Division.

FRANCIS LEE HIGGINSON, Complainant, *vs.* KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Childs, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants. } No. 7453. In Equity.

To the honorable judges of the circuit court of the United States for the district of Kansas, first division:

Francis Lee Higginson, a resident and citizen of the State of Massachusetts and a stockholder of the Kansas City Stock Yards Company, on his own behalf and on behalf of other stockholders of the

Kansas City Stock Yards Company having like interest herein a
similarly situated, who may hereafter join in the prosecution of t
suit and become parties herein and contribute to the expens
hereof, brings this his bill in equity against the Kansas City Sto
Yards Company, a corporation duly created, organized, a
43 existing under the laws of the State of Kansas and a reside
and citizen of the State of Kansas and of the first division
the said district, having its principal office and place of business
this State at the city of Kansas City, in this State; Charles F. Mor
a director, vice-president, and general manager of the Kansas Ci
Stock Yards Company, and also the managing director of said c
poration, and also at the present time, in consequence of the absen
of the president of said corporation in Europe, the acting preside
thereof and a resident and citizen of the State of Missouri; Har
P. Child, the assistant general manager of the Kansas City Sto
Yards Company and a resident and citizen of the State of Missou
Eugene Rust, the general superintendent of the Kansas City Sto
Yards Company and a resident and citizen of the State of M
souri; Elliott E. Richardson, the secretary of said Kansas Ci
Stock Yards Company and a resident and citizen of the State
Kansas and of the first division of said district, and Louis C. Boy
as attorney general of the State of Kansas, being the duly elect
qualified, and acting attorney general of the said State of Kans
and a resident and citizen thereof and an inhabitant of the fi
division of said district; and thereupon your orator complains a
alleges:

I. That your orator, Francis Lee Higginson, is a resident a
citizen of the State of Massachusetts, and is a stockholder in t
Kansas City Stock Yards Company, being the owner and in poss
sion of 296 shares of the capital stock of said corporation, 200 sha
of which have been owned and held by him for more than sev
years last past, and which said shares of stock so held, owned, a
possessed by him are of the full value of more than fi
44 thousand ($5,000) dollars, to wit, of the value of thirty-sev
thousand ($37,000) dollars; that your orator invested in and
came the owner of said stock in the said corporation for a valua
consideration, to earn and obtain thereon a reasonable and a fair di
dend or rate of interest on the actual value thereof; that since yo
orator became the owner and holder of said stock up to this ti
the said corporation has been so economically and successfully
erated and managed as to produce some profit to your orator a
to the other stockholders of said corporation who have invest
their money in said corporation and in the stock thereof; that yo
orator is entitled to demand and require that the said corporati
shall continue to carry on its business in the future as in the pa
so that the said corporation, if possible, shall earn a reasonable a
fair dividend or interest on the present actual value of its proper
so that your orator, as a stockholder therein, shall receive so
compensation for the use of his money and property invested in s
corporation and in the stock thereof without prejudice to t
rights of others, and for this purpose and to this end your orato

entitled to demand of the said Kansas City Stock Yards Company and the officers and agents thereof that the said company shall prescribe, exact, and collect such just and reasonable rates, charges, and compensation from persons doing business with it or making purchases of hay, corn, or other property therefrom as that the said corporation shall earn a fair and reasonable compensation or interest on the present actual value of its property, if it be possible
45 so to do in the lawful transaction of its business; that the amount involved in this suit and the matter in dispute exceeds, exclusive of interest and costs, the sum and value of two thousand dollars, and the damages and losses which will accrue to your complainant if the so-called act hereinafter referred to shall be enforced in any respect will largely exceed, exclusive of interest and costs, the sum and value of two thousand dollars.

II. That the Kansas City Stock Yards Company, defendant, is and for more than twenty years last past has been a corporation duly created, organized, and existing under the laws of the State of Kansas and a citizen and resident thereof and of the first division of said district, with power to construct, maintain, and operate stock yards in this State and in the State of Missouri and to own real estate for that purpose, with authority also to erect and maintain buildings, hotels, railways, switches, yards, pens, and such other improvements as may be necessary for its purposes, and also with authority for receiving, shipping, yarding, feeding, and otherwise caring for horses, mules, cattle, and other stock at its yards in Kansas City, Kansas, and in Kansas City, Missouri, with the right of demanding, exacting, and collecting for its services performed and for its property sold to others fair compensation, and also such prices therefor as might be agreed upon by the parties interested; that the yards occupied by it in carrying on its business consist of about one hundred and sixty acres, about one hundred and twenty
46 acres of which are situated in this State and about forty acres thereof in the State of Missouri; that about sixty-five per cent. of the earnings of said corporation are derived from its business carried on in this State, and that about thirty-five per cent. thereof is derived from its business carried on in the State of Missouri; that for a very large part of this real estate the said corporation was compelled to pay large prices therefor, because it was absolutely necessary for its use to successfully carry on its business and because the same was at the time of purchase occupied by a good class of buildings, which it was necessary to remove, and the land so formerly occupied by such buildings is now being used entirely for stock-yards purposes; that the improvements at the stock yards, consisting of buildings, railroads, tracks, switches, viaducts, pens, and other improvements, are very extensive and maintained in a superior condition, the cattle pens alone covering about eighty acres, all of them either floored with planks or paved with vitrified brick; that the corporation has hog sheds with a daily capacity of thirty thousand hogs, and sheep sheds with a daily capacity of twenty thousand sheep, and also stables for about four thousand horses and mules; that during the past five years the capacity of

the yards of the corporation has been, to meet the growing demands of business, almost doubled at a large expenditure of money; that the authorized capital stock of said corporation is seven million five hundred thousand ($7,500,000) dollars, of which $7,368,650 on December 31, 1896, had been issued; that the present actual value of the property of said corporation so employed for its stock
47 yards, as aforesaid, is in excess of the value of seven million five hundred thousand ($7,500,000) dollars; that for the year 1896 the total receipts of stock at said stock yards were as follows, to wit:

1,714,532 cattle,
100,166 calves,
993,126 sheep,
2,605,575 hogs,
57,847 horses and mules,

making a total of all stock handled by said yards of 5,471,466; that the gross earnings of the corporation for the year 1896 were one million twenty-three thousand eight hundred and seventy and $\frac{20}{100}$ dollars ($1,023,870.20); that the total expenditures were five hundred and forty-nine thousand three hundred and fifty-one and $\frac{80}{100}$ ($549,351.80) dollars, all of which were necessary for the operation and maintenance of the property, leaving net earnings of four hundred and seventy-four thousand five hundred and eighteen and $\frac{40}{100}$ ($474,518.40) dollars, about six per centum on the capital stock of the corporation for that year; that the yards, pens, and most of the improvements of said stock yards have to be necessarily replaced or renewed every five to seven years, costing large sums of money therefor and consuming a large amount of the yearly earnings of the said corporation; that the charges now prescribed, exacted, and collected by the corporation, and which have existed for several years, are as follows, to wit:

For driving, yarding, watering, and weighing cattle, twenty-five cents per head; calves, ten cents per head; hogs, eight cents per head, and sheep, five cents per head; that such charges and
48 prices are fair, reasonable, and just, considering all conditions and the services rendered therefor, and only furnish reasonable compensation to the said defendant corporation; that all existing charges and prices of the corporation for hay, corn, and other grain sold or delivered by it under the conditions and circumstances in which the same are sold and delivered and fed, and the care and attention given by the corporation to cattle and other stock in its yards in connection with the sale, delivery, and feeding of hay, corn, and other grain, are fair, just, and reasonable, and the operation of the stock yards under such rates, charges, and prices and the collection thereof only permit the corporation to earn a fair and reasonable compensation or interest on the present actual value of its property so necessarily occupied and used by it for stock-yards business, and such earnings are about six per centum per annum on the money invested in said corporation after paying and operating expenses thereof, taxes, and the expenses of the necessary repairs, renewals, and the maintenance of the same; that the charges for

yardage and feed at the stock yards of the said corporation are the same as those of other stock yards similarly conducted, and the same as the stock yards at St. Louis, Missouri; East St. Louis, and Chicago, Illinois, and Omaha, Nebraska; that said defendant corporation makes no charges whatever on any stock that is not sold in the yards when received from railroad companies, and said stock is subject to the order of the owner and is delivered to the railroads or buyers without charge to the owner; that said stock yards so owned and operated by said corporation have been and are of great pecuniary value and benefit to the stock raisers and shippers of Kansas, Missouri, and adjacent States; that the location and operation of the stock yards of said corporation in this State and in Kansas City, Missouri, have induced large packing establishments to locate in Kansas City, Kansas, for the purpose of buying, killing, and packing cattle and other stock, thereby furnishing an excellent and convenient market to the stock raisers and shippers of Kansas, Missouri, and adjacent States; that fat cattle sold in Kansas City in 1896 netted an average of nine and three-fourths cents per hundred pounds more than the same stock sold in Chicago the same day, and that hogs netted nine cents more, and sheep seventeen cents more, and that the importance of the stock market at Kansas City to the producers, stock raisers, and shippers of Kansas has been greatly increased by the successful operation of the large and extensive stock yards of said corporation at and near Kansas City, Kansas, and at and near Kansas City, Missouri.

III. That Charles F. Morse, defendant, is a director, vice-president, and general manager of the Kansas City Stock Yards Company and the only managing director thereof, and at the present time, in consequence of the absence of the president of said corporation in Europe, is also the acting president thereof and has full authority to fix the rates and prices to be charged by said stock yards company, and is a resident and citizen of the State of Missouri; that Harry P. Child is the assistant general manager of said corporation and a citizen and resident of the State of Missouri; that Eugene Rust, defendant, is the general superintendent of said corporation and a resident and citizen of the State of Missouri; that Elliott E. Richardson is the secretary of said corporation and a resident and citizen of the State of Kansas and of the first division of said district, and that Louis C. Boyle, as attorney general of the State of Kansas, is a citizen and resident of the State of Kansas and an inhabitant of the first division of said district, and the duly elected, qualified, and acting attorney general of said State.

IV. That on the third day of March, 1897, Honorable John W. Leedy, as governor of the State of Kansas, approved a certain so-called act, "House bill No. 87," and entitled "An act defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating the charges thereof, and removing restrictions in the trade of dead animals, and prescribing penalties for the violations of this act;" that in the said so-called act it was provided the same should take effect and be in

force from and after its publication in the official State paper of the State of Kansas; that a certified copy of the said so-called act is hereto attached, marked Exhibit "A," and made a part of this bill of complaint, to which reference is hereby made as if fully incorporated herein; that the said so-called act was published in the official State paper of the State on the 12th day of March, A. D. 1897; that the said so-called act is now by the said defendant, Louis C. Boyle, as attorney general of the State of Kansas, alleged to be in full force, virtue, and effect as a valid law of the State of
51 Kansas, the said so-called act providing, among other things, that "it shall be the duty of the attorney general to prosecute all violations of the provisions thereof."

V. That the said so-called act approved March 3rd, 1897, and heretofore referred to as Exhibit "A," is unconstitutional and void in this, to wit, that under the provisions of the Constitution of the United States, and particularly under the third clause of section 8, article 1, and of article 8 and of the fifth and the fourteenth amendments thereof, neither the legislature of the State of Kansas nor the State of Kansas has power to enact or enforce the so-called act or any of the provisions thereof so as to include or apply to the Kansas City Stock Yards Company, nor any legislative power or other authority to define the duties of the said corporation in carrying on and operating its business, or any legislative power or other authority to regulate the charges of said corporation for services rendered by it to stock-shippers or other persons, or any legislative power or other authority to abridge in any manner its rights, privileges, and immunities, as it is attempted to do by the said so-called act, or any legislative power or other authority to prescribe any penalties whatever for the violations of the said so-called act or of any of its provisions.

VI. That the said so-called act approved March 3rd, 1897, is unconstitutional and void as contrary to and in conflict with the Constitution of the United States, and especially as contrary
52 to and in conflict with the provisions of the fourteenth amendment thereof, in this, to wit, that it denies to the Kansas City Stock Yards Company within the jurisdiction of the State of Kansas the equal protection of the laws, in that by its provisions it is made to apply only to such stock yards within the State "into which live stock is received for the purpose of exposing or having the same exposed for sale or feeding and doing business for a compensation, and which for the preceding twelve months shall have had an average daily receipt of not less than one hundred head of cattle or three hundred head of hogs or three hundred head of sheep;" in that by such provision it singles the Kansas City stock yards out of all the other citizens and corporations within the State of Kansas without giving to such corporation any specific or corresponding benefit therefor and restricts the application of the said so-called act to the Kansas City Stock Yards Company alone, there being no other stock yards operated in the State of Kansas except the defendant corporation, which for the preceding twelve months has "an average daily receipt of not less than one hundred

head of cattle or three hundred head of hogs or three hundred head of sheep;" that while the said so-called act in controversy does not specifically name the Kansas City Stock Yards Company, it so describes it that there can be no possible doubt with regard to the attempted exclusive application of the said so-called act to said defendant corporation, and this is substantially the same as naming the said corporation in the said so-called act; that the said so-called act not only attempts to fix the charges of said
53 corporation for driving, yarding, watering, and weighing stock, but also attempts to fix the prices at which it may sell and deliver hay, corn, and other grain, and therefore said corporation is not treated as other owners and operators of stock yards within the State are treated which for the preceding twelve months have a less "average daily capacity than one hundred head of cattle or three hundred head of hogs or three hundred head of sheep," nor is it treated as other corporations or persons are treated who are engaged in selling and trading in personal property, nor is it treated equally with such other corporations or persons; that the said so-called act is strictly class legislation, arbitrarily made and enacted to discriminate against the defendant corporation and your orator and other stockholders of said corporation, and prevents such corporation from being treated as other stock yards corporations are treated and as other corporations and persons are treated engaged in similar business in the State under like conditions and circumstances.

VII. That the said so-called act approved March 3rd, 1897, is unconstitutional and void as contrary to and in conflict with the provisions of the Constitution of the United States, and especially as contrary to and in conflict with the provisions of the fifth and fourteenth amendments thereof, in this, to wit, that thereby the State of Kansas is attempting to deprive the Kansas City Stock Yards Company and your orator as a stockholder therein of liberty and property without due process of law and without just compensation therefor; that said defendant corporation is entitled, if it can do so in the operation of its business,
54 to earn a fair and reasonable compensation or interest yearly on the present actual value of its property, which said present actual value thereof exceeds the sum of seven million five hundred thousand dollars, and if the said so-called act is or shall be applied to all the business of said corporation, and its provisions thereof shall be enforced against said defendant, its officers, agents, and servants, then the legislature of the State of Kansas and said State have unlawfully assumed the right and illegally attempt to exercise the right to reduce the rates and charges of said corporation for the driving, yarding, watering, and weighing of cattle in this State, and also abridging, restricting, and limiting said corporation in the prices at which it may sell and deliver hay, corn, and other grain, so as to diminish and reduce its charges, rates, revenues, and earnings in such a manner and to such an extent as to prevent it and your orator and the other stockholders therein from earning, receiving, or obtaining a reasonable per cent. for the money invested

in said corporation, and preventing said corporation and your orator and the other stockholders therein from earning, receiving, or obtaining a reasonable or fair compensation, interest, or dividend upon the present actual value of the property of said corporation; that the enforcement of the provisions of the said so-called act against defendant corporation will reduce the receipts of said corporation yearly to the amount of over three hundred and nine thousand ($309,000)
55 dollars, which reduction, with the necessary and continuing costs of renewal of its yards, pens, and other improvements, will leave no fair and reasonable compensation to the said corporation nor any dividends or interest or compensation to your orator or to the other stockholders therein, and will destroy the value of the stock of your orator and the stock of the other stockholders of said corporation and the value of the property of said corporation and render the same worthless, and if said so-called act is enforced against said corporation it deprives said corporation and all the stockholders therein, including your orator, of their property as completely as by a special act expressly providing for its depreciation, confiscation, and destruction.

VIII. That the said so-called act approved March 3rd, 1897, is unconstitutional and void as contrary to and in conflict with the provisions of the Constitution of the United States and of the State of Kansas, and especially as contrary to and in conflict with the provisions of article 8 of the original amendments to the Constitution of the United States and in conflict with the provisions of section 9 of the bill of rights of the constitution of Kansas, in this, to wit, that said so-called act permits the infliction of cruel and unusual punishments; that the last clause of section 7 of the said so-called act provides that any person or persons violating the provisions thereof shall be deemed guilty of a misdemeanor, and upon conviction therefor "for each subsequent offense he or they shall be fined in any sum not less than one thousand dollars and by
56 imprisonment in the county jail not less than six months;" but the maximum fine and imprisonment is not fixed, thereby permitting fines for each subsequent offense therein referred to — be of any amount exceeding one thousand dollars and the infliction of imprisonment for any period of time exceeding six months, thereby authorizing and requiring the infliction for each subsequent offense referred to of excessive and unusual fines and of cruel and unusual punishments, such fines and imprisonment being wholly unlimited; that said last clause of section 7 of said so-called act is also unconstitutional and void, in this, to wit, that it is contrary to the provisions of the Constitution of the United States, in that it leaves to judicial discretion, without any limitation, the infliction of punishments for each subsequent offense therein referred to by excessive fines and cruel and unusual punishments.

IX. That the said so-called act approved March 3rd, 1897, is unconstitutional and void as contrary to and in conflict with the provisions of the Constitution of the United States, and especially as contrary to and in conflict with the provisions of the fifth and fourteenth amendments thereof, because it is an illegal effort to

interfere with the lawful rights, powers, and privileges of the defendant corporation, having the right and power to seek and obtain such compensation as it properly can for the use of its own property and the sale of proper articles, and is also an illegal effort to interfere with and abridge the lawful rights, powers, privileges, and immunities of your orator and the other stockholders of
57 defendant corporation, who are seeking and trying to obtain, by having invested in said stock, such compensation as they legally can for the use of their own money and property, and therefore said so-called act is nothing else than an effort of the legislature of the State and of the State of Kansas to regulate the private business of a private corporation and of private individuals, and to limit, abridge, and destroy the compensation which the said corporation may legally exact and collect for the use of its own property and for its stockholders, and said so-called act and the provisions thereof have not been and are not now exercised and are not proposed to be exercised by said State in any matter involving the public health or the public morals or of any other legitimate police power.

X. That the said so-called act approved March 3rd, 1897, and all of the various sections thereof are unconstitutional and void as contrary to and in conflict with the third clause of section 8, article 1, of the Constitution of the United States, which confers upon Congress power to regulate commerce with foreign nations and among the several States, and the several acts of Congress passed in pursuance thereof, in this, to wit:

That the said Kansas City Stock Yards Company, defendant, owns and operates extensive and costly stock yards, as aforesaid, in the county of Wyandotte and State of Kansas, in the vicinity of the mouth of the Kansas river, in and near to what is known as Kansas City, Kansas, and in Jackson county, in the State of Missouri, and in and near to what is known as Kansas City, Missouri,
58 and said yards in both States have all the usual and necessary conveniences for the reception, driving, feeding, and shipment of cattle and other stock and in carrying on its business and operating its yards. It receives almost daily, not only from this State and from the State of Missouri, but also from Texas, Colorado, Nebraska, and 23 other States and Territories, great numbers of cattle and other stock, which are transported by the railroads to the said defendant corporation for care, feeding, and shipment in this State and Missouri, and when so transported by the railroads of the several States and Territories to the yards of the defendant corporation in this State and in the State of Missouri they are yarded, fed, cared for, sold, and shipped; that the yards in the State of Kansas and Missouri are so connected and carried on that the cattle and other stock go from one State to the other in the said yards, and are driven to and from the said yards in both States as the business of the stock raiser and shipper demands and as the rules and regulations of the stock yards company require; that very frequently cattle so received from the State of Missouri and Kansas and also from the other State aforesaid are shipped

from the yards of defendant to Chicago, in the State of Illinois, and also to other cities and States outside of the State of Kansas and Missouri; that the said business of the said corporation is not carried on exclusively within the limits of the State of Kansas, but, as aforesaid stated, also within the State of Missouri and other States; that the said yards, railroad tracks and switches, and other prop-
59 erty of the said corporation are a part of commerce itself, are necessarily connected with interstate commerce, and that the said defendant is engaged in interstate commerce, and the provisions of the said so-called act effect commerce and amount to a regulation of it within the meaning of the Constitution of the United States, and therefore the provisions of the said so-called act belong to that class of powers which cannot be exercised by the legislature of Kansas or by the State itself or by any other State of the Union.

XI. That the said so-called act approved March 3rd, 1897, and all of the various sections thereof are contrary to and in conflict with the provisions of an act of Congress approved May 29th, 1884, entitled "An act for the establishment of a bureau of animal industry, to prevent the exportation of diseased cattle, and to provide means for the suppression and extirpation of pleuro-pneumonia and other contagious diseases among domestic animals," and of an act of Congress approved August 8, 1894, making appropriation for the Department of Agriculture for the fiscal year ending June 30th, 1895, and the regulations concerning cattle transportation made and promulgated in accordance with the provisions of said acts of Congress aforesaid by the Secretary of the United States Department of Agriculture, at his office, in Washington, District of Columbia, on January 27th, 1896, in this, to wit:

That under the provisions of section 4 of said so-called act, referred to herein as "Exhibit A," it is expressly provided that
60 "there shall be but one yardage charged," and it is further provided therein that "for driving, yarding, watering, and weighing of cattle fifteen cents per head" may only be charged, demanded, and collected by the defendant corporation for doing such service in the State of Kansas; that under the said regulations concerning cattle transportation, so made and published as aforesaid by the Secretary of the United States Department of Agriculture, places, pens, and grounds are specially set apart by the defendant corporation in the county of Wyandotte and State of Kansas, in the vicinity of the mouth of the Kansas river, consisting of about forty (40) acres of land, called "quarantine grounds," where cattle transported by rail to the defendant corporation between the 15th day of February and the 15th day of November of each and every year from the area south of or below the Federal quarantine line legally established and designated under the acts of Congress aforesaid are unloaded to be fed, watered, cared for, and sold for slaughter or shipped therefrom, as provided by the said regulations of the United States Department of Agriculture; that large numbers of cattle are so transported yearly to and unloaded in said places, pens, and grounds so set apart by the defendant corporation in accordance with the said regulations concerning

aid cattle so transported; that such cattle must be placed in sep-
rate yards, pens, and grounds and no other cattle admitted
hereto; that the same must be kept carefully cleaned and dis-
nfected, at great cost, as provided by the regulations concerning
uch cattle so transported; that to water, feed, and take care
of cattle and other stock in the places, pens, and grounds so
1 kept by the defendant corporation for quarantine purposes,
the prices fixed in section 4 of said so-called act, referred
o herein as "Exhibit A," are wholly insufficient and not compensa-
ory for the service, attention, and yardage absolutely necessary to
omply with the said regulations aforesaid; and if said defendant
orporation is restricted to the maximum prices fixed in said
ection 4 of the said so-called act, then said cattle so transported by
ail from said area south of or below said Federal quarantine line
annot be properly fed, watered, cared for, and yarded by the
lefendant corporation in accordance with the requirements of said
egulations, as aforesaid stated, and therefore, on account of the
naximum charges and prices fixed in said section 4 of said so-called
ct to be collected for yardage and the prices to be charged under
ection 5 of said so-called act for hay, corn, and other grain, if
nforced against the said corporation, it might be compelled to
efuse to permit said cattle to be unloaded for feed, water, care,
ttention, yardage, sale, and shipment, as aforesaid, in its special
ens, places, and grounds so set apart for the reception of said cattle,
nd the provisions of said so-called act therefore interfere with the
arrying out of the regulations aforesaid concerning said cattle
ransportation and the acts of Congress aforesaid, and will deprive
he said defendant corporation and your orator and the other
tockholders of said corporation from obtaining reasonable, fair, and
ust compensation for the yardage and feeding of said cattle so
transported through the State of Kansas from the area south
2 of and below the Federal quarantine line aforesaid, and will
also prevent and forbid the owners and shippers of such cattle
rom having sufficient, convenient, and proper quarantine grounds
n the county of Wyandotte, State of Kansas, where their said cattle
an be fed, watered, cared for, sold, or shipped in accordance with
he said regulations concerning such cattle transportation.

XII. That by said section 8 of said so-called act, referred to herein
s "Exhibit A," it is made the duty of the said Louis C. Boyle, as
ttorney general of the State of Kansas, to prosecute all of the
iolations of the provisions of said act; that your orator fears that
he said attorney general may cause the defendant corporation and
ny and all of its officers and agents who shall violate any of its
rovisions to be arrested and prosecuted; that he will attempt to
nforce said so-called act through the courts of Wyandotte county,
ansas, and through the courts of the State of Kansas by a
ultiplicity of criminal actions or proceedings against each and
very person failing or refusing to comply with the provisions
hereof, including the said defendant corporation and its officers
nd agents, thereby greatly harassing and annoying the said
efendant corporation and its officers and agents and causing them

great expense and consuming valuable time, unless the said defendant corporation, its officers and agents, shall put in force at once the said charges and prices specified in said sections 4 and 5 of said so-called act and shall obey and carry out all of the terms and provisions of said act and each section thereof; and your
63 orator fears that the said Louis C. Boyle, as attorney general, will proceed at once to carry into force said arrests and prosecutions unless immediately restrained by the order and injunction of this honorable court.

XIII. That heretofore, to wit, on the 12th day of March, A. D. 1897, the Kansas City Stock Yards Company and also Charles F. Morse, a director, vice-president, and general manager of said corporation, and also at present the acting president of said corporation, and being the only managing director hereof, on account of the passage of said so-called act by the legislature of the State of Kansas and the heavy penalties therein provided and the fear that said Louis C. Boyle, as attorney general aforesaid, will at once proceed to arrest and prosecute said corporation and its officers and employés, and to save the defendant corporation, its officers, agents, servants, and employés, from being so arrested, harassed, and annoyed by the said Louis C. Boyle, as attorney general, in attempting to enforce the provisions of said so called act, notwithstanding the invalidity of said act, publicly gave notice that the provisions of the said so-called act would be applied by the defendant corporation, its officers and agents, to the operation of its yards in the State of Kansas, and that all the provisions therein contained concerning charges for yardage or otherwise and all the prices for the sale and delivery of hay, corn, and other grain therein fixed would be observed and carried out in the State of Kansas, and that said
64 so-called act and all the terms thereof would be observed and obeyed by the said defendant corporation, its officers and agents, and also publicly gave notice that on the 13th day of March, 1897, the prices fixed in said section 4 of said so-called act would be at once ordered and put in force in the operation of the yards and property of said defendant corporation in the State of Kansas, and that no greater prices would be demanded, exacted, or collected for driving, yarding, watering, and weighing cattle and other stock than as therein specified, and also that said defendant corporation, its officers and agents, would sell and deliver in the State of Kansas at the prices fixed in said section 5 of said so-called act hay, corn, and other grain at the prices, terms, and weight specified in said section 5 of the said so-called act, and also would in all other ways comply with the provisions of the said act because of the heavy fines and penalties therein provided and because of the fear of arrests and prosecutions, as hereinbefore alleged, notwithstanding the invalidity of such act.

XIV. That heretofore, on the 22nd day of March, 1897, your orator, as a stockholder of said defendant corporation and as interested in the economical and successful management of the business of said corporation, and who was then and there a stockholder and shareholder, at the time of the transactions complained of, desiring

to secure on the part of the managing directors of said defendant corporation a revocation of said order and directions of said defendant corporation and of its said acting president to put in force
65 the provisions of said act aforesaid, did serve a notice in writing upon said defendant corporation and its directors demanding that the said defendant corporation and the said managing directors aforesaid should continue to exact, receive, and collect the rates and prices now existing in the operation of the business of the said defendant corporation for driving, yarding, watering, and weighing stock, and also in selling and delivering hay, corn, and other grain, so that its property would yield some compensation for services performed, sales made, and the business carried on, and that said corporation take proper legal proceedings to protect itself and its stockholders from the effect of such law.

And your orator alleges that said defendant corporation and its managing directors, as aforesaid, have each refused to comply with the request of your orator and wholly disregard the same, and your orator hoped that the said defendant corporation and its managing directors and the other officers and agents of said corporation would have complied with the reasonable request of your orator, as in justice and equity the said defendant corporation and its officers and agents should have done; but now so it is that the said defendant corporation and such managing directors and the other officers and agents of said defendant corporation under their control and direction, to the great wrong and injury of your orator in the
66 premises, absolutely refuse to comply with such reasonable and proper request unless restrained and ordered to do — by some court of competent jurisdiction.

And your orator further says that the cause of the failure of your orator to obtain a revocation of said order and directions of the said defendant corporation and of the managing directors thereof is, as herein stated, that the said defendant corporation and the said directors, notwithstanding the invalidity of the so-called act of the legislature of the State of Kansas, referred to as "Exhibit A," are in fear of the annoyance, harassment, humiliation, and expense to which the said defendant corporation and the said Morse and the other officers, agents, servants, and employés of said corporation will be immediately subjected under the so-called act herein referred to, and especially so if its provisions are attempted to be enforced by Louis C. Boyle, as attorney general, as is now proposed and threatened by him, as aforesaid stated, or any other officer of the State of Kansas, and therefore the said defendant and the said directors absolutely refuse to secure to your orator such action or any action as he has demanded and desires on the part of and from the said corporation and of and from the managing directors thereof, unless so ordered by some court of competent jurisdiction, as aforesaid.

67 And your orator further says that this suit is not a collusive one with the defendants or any other person or party to confer on the above-entitled court of the United States jurisdiction of a case which it would not otherwise have cognizance of, but

your orator alleges that such suit is brought in good faith for the protection of his own interest in the defendant corporation and to prevent his said stock and his property therein from being depreciated, lost, and destroyed in violation of law and the provisions of the Constitution of the United States, as aforesaid.

XV. And your orator says that, as before stated, the enforcement of the provisions of said so-called act against the defendant corporation and its officers and agents and the observance of the provisions of said so-called act fixing a maximum charge to be made by said defendant corporation for services rendered, accommodations furnished, and hay, corn, and other grain sold by the said defendant corporation, as is now proposed and threatened to be done by them, will deprive the defendant corporation of the power of exacting reasonable and fair compensatory rates for yardage and other services rendered, and for hay, corn, and other grain sold in its yards, and will deprive it of the use of its property and, in effect, of the property itself, without the due process of law,

68 and if the said defendant corporation and its officers and agents are allowed to put in force the maximum rates and prices aforesaid, specified in said so-called act, your orator and the other stockholders of said defendant corporation will be unable to secure a reasonable per cent. on their money invested in said corporation and in the stock and property thereof, and will be unable from the earnings of said defendant corporation to obtain any reasonable and fair compensation, dividend, or interest on the actual value of their said stock, as the said defendant corporation cannot, under such maximum rates, charges, and prices, earn any reasonable or fair compensation, interest, or dividend on the present actual value of its property.

And your orator says that he has the right to demand of the said defendant corporation and of the said Charles F. Morse, as acting president and managing director thereof, that the business of said corporation shall be carefully, properly, economically, and successfully managed, as heretofore it has been done, and that such reasonable rates and compensation shall be exacted, demanded, and collected for services rendered, accommodations furnished, and for the hay, corn, and other grain sold by said defendant corporation, so that the said corporation may earn reasonable and fair compensation, interest, or dividends on the present actual value of its property, and if said corporation continues in force its present existing rates, charges, and prices it can and will earn reasonable and fair compensation, interest, and dividends on the present actual value of its property, which can be properly divided among the stockholders of said corporation, including your orator.

69 And your orator further says he fears that if such destructive maximum rates, charges, and prices are put in force, as aforesaid, your orator and the other stockholders of said defendant corporation will suffer great and irreparable injury, for which damages at law would be no adequate remedy, and said defendant corporation and the officers and agents thereof will carry out their

said orders and directions aforesaid unless restrained at once by the order and injunction of this honorable court.

In consideration whereof and forasmuch as your orator is remediless in the premises at and by the strict rules of the common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable, therefore your orator prays the decree of this honorable court adjudging that it is the duty of the said defendant corporation and the said Charles F. Morse, acting president, general manager, and sole managing director of said defendant corporation, for the benefit of said corporation and of your orator and the other stockholders of said corporation, to revoke at once the orders and directions to put in force the provisions of said so-called act referred to herein as "Exhibit A," and the maximum charges and prices therein specified, and that it is the duty of said defendant corporation and the said Charles F. Morse, acting president, general manager, and sole managing director, for the pecuniary benefit of your orator and the other stockholders of said defendant corporation, to maintain and operate the stock yards of said defendant corpora-
70 tion herein named in the same manner as they have been heretofore economically and successfully operated, and to charge for the services to be furnished for yardage and other matters the present existing charges (which are fair, reasonable, and just), and also to sell and deliver hay, corn, and other grain to stock raisers, shippers, and other persons upon the same terms and for the same prices and in the same way such articles are now sold by said defendant corporation (which said prices under all the circumstances and conditions are fair, reasonable, and just), and that said defendant corporation and each of its said officers and agents named as defendants herein shall be enjoined from obeying, observing, or putting into force any of the provisions of said so-called act, and that said order and injunction issue against said defendant corporation and the said Charles F. Morse, as acting president and sole managing director thereof, and each of the other officers and agents of said defendant corporation made parties defendant herein, commanding them and each of them to refrain from putting into force the provisions of the said so-called act or any part thereof.

That the said Louis C. Boyle, as attorney general, be adjudged and decreed from attempting as against said defendant corporation or any of its officers, agents, servants, or employés to enforce the provisions of the said so-called act or any part thereof, and also that said order and injunction issue against the said Louis C. Boyle, as attorney general, commanding him to refrain from harassing and annoying, by prosecution or otherwise, under the pro-
71 visions of the said so-called act, the defendant corporation, the said Charles F. Morse, or any of the other officers, servants, agents, or employés of the said defendant corporation herein named.

That the final mandatory order and injunction of this court in this case issue, compelling said defendant corporation and the said Charles F. Morse and each of the other officers and agents of said

defendant corporation herein named to operate and maintain the said stock yards of the said defendant corporation in the State of Kansas as they are now operated and maintained, and that they exact and collect the same charges for services performed and the same prices now demanded and received, wholly disregarding the said so-called act and all of the provisions thereof.

That a final order, judgment, and decree issue that the said so-called act approved March 3rd, 1897, herein referred to as "Exhibit A," and made a part of this bill of complaint, is unconstitutional and void and of no validity, force, or effect whatever, and that all of said defendants and each of them be enjoined from enforcing or attempting to enforce the said so-called act of any of the provisions thereof.

That a preliminary injunction may issue at once, upon the filing of this bill of complaint, against the said defendant corporation and each of its officers and agents named as defendants herein during the pendency of this suit strictly commanding and enjoining the said defendants and each of them, under the pains and penalties which may fall upon them and each of them in case of disobedience, that they forthwith and until the further order, judg-
72 ment, and decree of this court desist from putting into force the said maximum rates, charges, and prices specified in said so-called act aforesaid, and against the said Louis C. Boyle, as attorney general, commanding and enjoining him to desist from enforcing or attempting to enforce the said so-called act against said defendant corporation and its officers and agents named as defendants herein by arrest or otherwise, through the courts of the State or otherwise.

For in so much as your orator is without relief in a court of law, may it please this honorable court to grant unto your orator a writ of subpœna, to be directed to the Kansas City Stock Yards Company, a corporation; Charles F. Morse, as director, general manager, acting president, and managing director of the said Kansas City Stock Yards Company; Harry P. Child, as the assistant general manager of the said corporation; Eugene Rust, as the general superintendent of the said corporation; Elliott E. Richardson, as the secretary of the said corporation, and Louis C. Boyle, as attorney general of the State of Kansas, commanding them and each of them, at a certain date and under the pain and penalty therein mentioned, personally to be and appear before this honorable court, then and there full and true, direct and perfect answers to make to all and singular the premises (but not under oath, answer under oath being hereby expressly waived), and further to stand to and abide by such further order and direction herein as to this honorable court may seem just; and for such further and other order and direction
73 herein as in equity and good conscience your orator may be entitled to, though not specifically prayed herein.

And your orator will ever pray.

FRANCIS LEE HIGGINSON.
WAGGENER, HORTON & ORR,
Sol'rs for Complainant.

ALBERT H. HORTON, *Of Counsel.*

74 UNITED STATES OF AMERICA, *District of Kansas*, } ss:

In the Circuit Court of the United States for the District of Kansas, First Division.

FRANCIS LEE HIGGINSON, Complainant,
vs.
KANSAS CITY STOCK YARDS COMPANY, Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kas., Defendants. } No. —. In Equity.

STATE OF MASSACHUSETTS, *County of Suffolk*, } ss:

Francis Lee Higginson, of lawful age, being duly sworn, says that he resides in Boston, in the State of Massachusetts, and is a citizen of said State; that he is the complainant named in the foregoing bill of complaint: that this affiant has read said bill of complaint and knows the contents thereof, and that the facts therein alleged are true; that the suit to be instituted by the filing of said bill is not a collusive one nor is it filed in collusion with the defendants named therein or with any of them, nor for the purpose of conferring upon said court or any court of the United States jurisdiction of a case of which it would not otherwise have jurisdiction; that on the 22nd day of March, 1897, this affiant sent
75 to the board of directors a communication, of which the following is a copy:

BOSTON, *March* 22, 1897.

To the directors of the Kansas City Stock Yards Company:

The undersigned, a stockholder of the Kansas City Stock Yards Company, owning and holding 296 shares of the capital stock, hereby calls your attention to an act recently passed by the legislature of the State of Kansas, entitled "An act defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating all charges thereof, and removing restrictions in the trade of dead animals, and prescribing penalties for violations of this act," approved March 3rd, 1897, which attempts to fix maximum rates to be charged by certain stock yards companies in that State for the yarding, driving, watering, weighing, and feeding of live stock delivered to such yards and exposed for sale or feeding. This law applies to the Kansas City Stock Yards Company, and its operation will be most disastrous to its interest. I am informed and confidently believe, that the result of an enforcement of the provisions of the law in question will be the reduction of the earnings of the company below the point at which the necessary operating expenses and a reasonable return to the stockholders can be realized.

I call your attention to several grave objections to this law:

1. The maximum charges prescribed by the law are unjust
76 and unreasonable because they do not afford the company sufficient compensation to enable it to pay its necessary expenses of operation and a fair and reasonable return to its stockholders.

2. The law is not general and uniform in its operation throughout the State of Kansas, in that it does not include within its provisions all stock yards in that State doing business for the public.

3. The law is an attempted interference upon the part of the State of Kansas with interstate commerce.

4. The penalties provided by the law for its violation by fine and imprisonment are cruel and unusual.

There are many other serious objections to the law affecting its validity and legality, but those mentioned above justify me as a stockholder of the company in insisting that the directors should take some measure to effectually protect the interest of myself and the other stockholders of the company against the operation of said law.

I demand and insist that the company shall decline to put in force and operation the charges limited by said law, and that it by proper legal proceedings test the validity of the statute in the courts.

Respectfully, FRANCIS LEE HIGGINSON.

That on the same day he received from the executive committee of said directors a reply, of which the following is a copy:

77 BOSTON, *March* 22, 1897.

Mr. Francis Lee Higginson, Boston.

DEAR SIR: Your communication to the directors of the Kansas City Stock Yards Company of this date, in which you insist and demand that the company decline to put in force and operation the rates of charges fixed and limited by the recent act of the Kansas legislature, and that it test the validity of the act by proper legal proceedings, was this day laid before the executive committee of this company, which, after due consideration, passed the following vote:

"Voted that the chairman of this meeting be, and he hereby is, authorized to notify Mr. Francis Lee Higginson that his communication to the directors of date of March 22nd, 1897, has been laid before the executive committee and has been carefully considered; that while the directors are satisfied that the operation of the law in question would be most disastrous to the company, yet, in view of the severe penalties, by both fine and imprisonment, imposed for a violation of the law, they do not feel justified in complying with the request and demand of Mr. Higginson."

Respectfully,

[SEAL.] N. THAYER, *Chairman.*

FRANCIS LEE HIGGINSON.

Subscribed and sworn to before me at my office, in the city of Boston, Mass., this 22nd day of March, 1897.

LOUIS A. FELIX,
Notary Public.

78 "EXHIBIT A."

Committee substitute for house bill No. 87.

An act defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating all charges thereof, and removing restrictions in the trade of dead animals, and prescribing penalties for violations of this act.

Be it enacted by the legislature of the State of Kansas:

SECTION 1. Any stock yards within this State, into which live stock is received for the purpose of exposing or having the same exposed for sale or feeding, and doing business for a compensation, and which for the preceding twelve months shall have had an average daily receipt of not less than one hundred head of cattle, or three hundred head of hogs, or three hundred head of sheep, are hereby declared to be public stock yards.

SECTION 2. Any person, company or corporation owning or operating any public stock yards or stock yards in this State is hereby declared to be a public stock-yards operator, whether living or being within this State or not.

SECTION 3. Every such public stock-yards operator or operators shall annually on the 31st day of December of each year, file with the secretary of state an itemized statement certified and sworn to, setting forth the number of head of cattle, calves, sheep, hogs, horses and mules received in his or their public stock yards during
79 the year next preceding.

SECTION 4. It shall be unlawful for the owners, proprietors, or the employés of the owners or proprietors of any such public stock yards within this State, to charge for driving, yarding, watering and weighing of stock, greater prices than the following: For driving, yarding, watering and weighing of cattle, 15 cents per head; calves 8 cents per head; hogs 6 cents per head; sheep 4 cents per head; and there shall be but one yardage charged.

SECTION 5. It shall be unlawful for the owner, owners or proprietors, or their employés, of any such stock yards within this State, to sell and deliver at the rate of less than two thousand pounds for a ton of hay, or any part thereof, the same to be of good quality, or to charge for or to sell the same at more than one hundred per cent. above the average market price, or value of such hay upon the markets of the towns or cities wherein such stock yards are located, upon the day preceding such sale and delivery; and it shall also be unlawful for any such owners, or proprietors, or employés, to sell and deliver less than seventy pounds of corn in the ear for a bushel, or less than fifty-six pounds of shelled corn for a bushel, or to charge for or to sell the same at more than one hundred per cent. above the

average market price or value of such ear corn or shelled corn o
the markets of the towns or cities wherein said stock yards ar
located, on the day next preceding such sale and delivery. All fee
not above named shall be sold for no greater per cent. of profit tha
hereinbefore provided.

80 SECTION 6. It shall be unlawful for the owners or proprie
tors of any stock yards to prohibit the owner or owners, o
the representatives of any owner or owners of any dead stock i
such yard or yards from selling such dead stock to any person o
persons.

SECTION 7. That any person or persons violating any of the pro
visions of this act shall be deemed guilty of a misdemeanor an
upon conviction thereof, shall be fined for the first offense not mor
than one hundred dollars, for the second offense not less than on
hundred dollars nor more than two hundred dollars; and for th
third offense not less than two hundred dollars nor more than fiv
hundred dollars and by imprisonment in the county jail not exceed
ing six months for each offense; and for each subsequent offense h
or they shall be fined in any sum not less than one thousand dollar
and by imprisonment in the county jail not less than six months

SECTION 8. It is hereby made the duty of the attorney general t
prosecute all violations of the provisions of this act.

SECTION 9. All acts or parts of acts in conflict with this act ar
hereby repealed.

SECTION 10. This act shall take effect and be in force from an
after its publication in the official State paper.

I hereby certify that the above bill originated in the house an
passed that body M'ch 1st, 1897.

W. D. STREET,
Speaker of the House.

81 & 82 A. D. GILPIN.
Chief Clerk of the House.

Passed the senate M'ch 2, 1897.

A. M. HARVEY,
President of the Senate.
M. WATSON,
Secretary of the Senate.

Approved March 3, 1897.

J. W. LEEDY, *Governor.*

No. 7453. Francis Lee Higginson *vs.* Kansas City Stock Yard
Co. *et al.* Bill of complaint. Filed March 26th, 1897. Geo. F
Sharitt, clerk.

83 UNITED STATES OF AMERICA, *District of Kansas*, } ss:

In the Circuit Court of the United States for the District of Kansas, First Division.

FRANCIS LEE HIGGINSON, Complainant,
vs.
KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants. } No. 7453. In Equity.

Whereas Francis Lee Higginson has presented his bill of complaint and affidavit in the above-entitled suit, wherein, among other things, he prays that the Kansas City Stock Yards Company, Charles F. Morse, as the general manager, acting president, and sole managing director of said corporation; Harry P. Child, as assistant general manager of said corporation; Eugene Rust, as general superintendent of said corporation, and Elliott E. Richardson, as secretary of said corporation, be commanded and enjoined and restrained from obeying and observing a so-called act of the legislature of the State of Kansas, approved March 3rd, 1897, and known as "committee substitute for house bill No. 87," entitled "An act defining what shall constitute public stock yards, defining the duty of the person or persons operating the same, and regulating the charges thereof and removing restrictions in the trade of dead animals by prescribing penalties for the violation of this act," and from putting into force in the business of said defendant corporation the maximum rates, charges, and prices specified in the so-called
84 act aforesaid, and wherein, among other things, he prays that the said defendant, Louis C. Boyle, as attorney general of the State of Kansas, be enjoined and restrained from enforcing or attempting to enforce the said so-called act or any of the provisions thereof against the said defendant corporation, its officers, agents, servants, and employés, by arrest, criminal prosecution, or otherwise, as more particularly shown in the bill of complaint herein and that a final injunction issue commanding said defendant corporation and its officers and agents named as defendants herein to operate and maintain the said defendant corporation and the business thereof, as in said bill of complaint prayed:

Now, therefore, it is ordered that the said defendants and each of them show cause before this court, at the city of Topeka, on Friday, April 2nd, A. D. 1897, at two o'clock p. m. of said day, or as soon thereafter as counsel can be heard, why the prayer of said bill of complaint for a preliminary injunction, as therein prayed for, should not be granted and why the said defendants and each of them, their officers, assistants, agents, servants, and employés, should not be enjoined and restrained during the pendency of this suit from obeying, observing, and enforcing the provisions of the so-called

act of the legislature of the State of Kansas, herein referred to, and why the said complainant should not have the relief prayed for in said bill of complaint; that pending the hearing of this matter the said defendant corporation and Charles F. Morse, as general manager, acting president, and sole managing director of said defendant corporation, and the other officers and agents of said corporation named as defendants herein, be, and they are hereby, ordered and restrained to desist and refrain from obeying, observing, or putting into force in the operation of the said defendant corporation's business the maximum rates, charges, and prices specified in said so-called act aforesaid; and the said Louis C. Boyle, as attorney general of the State of Kansas, is hereby ordered and restrained to
85–93 desist and refrain from enforcing the provisions of said so-called act against the said defendant corporation, its officers, agents, servants, and employés, and from arresting or criminally prosecuting in the courts of the State or otherwise the said defendant corporation, its officers, agents, servants, and employés, on account of any non-observance or disobedience of the said so-called act or any of its provisions or on account of the failure to fully comply with the terms thereof.

Let a copy of this order, together with a copy of the bill of complaint herein, duly sworn to, be served upon the defendants forthwith.

CASSIUS G. FOSTER, *Judge.*

March 26, 1897.

(Endorsed:) No. 7453. Restraining order. Filed M'ch 26, 1897. Geo. F. Sharitt, clerk.

94 UNITED STATES OF AMERICA, } ss:
District of Kansas, }

In the Circuit Court of the United States for the District of Kansas, First Division.

CHARLES U. COTTING, Complainant,
vs.
KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Childs, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants. } No. 7427. In Equity.

Amendment to Bill of Complaint.

Now comes the complainant, Charles U. Cotting, and, with leave of the court first had and obtained, amends his bill of complaint filed herein as follows, to wit: That after the 8th paragraph and part thereof of said bill of complaint and as paragraph and part No. 8½ thereof there is inserted the following amendment, to wit:

"VIII½.

Your orator further complains and alleges upon information and belief, and therefore charges the fact to be, that the so-called act approved March 3, 1897, a copy of which is attached to the bill of complaint as 'Exhibit A' and made a part thereof, is unconstitutional and void, in this, to wit, that said so-called act never passed the legislature of the State of Kansas properly, legally, or constitutionally; that on January 15, 1897, a certain bill, known as No. 87 and entitled 'An act to regulate stock yards and providing punishment for a violation thereof,' was introduced in the house of representatives of the State of Kansas by a member thereof, and was then read for the first time; that on January 17, 1897, this bill was read a second time and 'referred to the committee on live stock;' that on February 3, 1897, the chairman of that committee reported to the house of representatives a 'committee substitute for house bill No. 87' entitled 'An act to regulate stock yards and providing punishment for a violation thereof;' that said committee substitute for house bill No. 87' had the same title as the original bill No. 87 aforesaid; that the said 'committee substitute for house bill No. 87' was treated in the house of representatives more as new matter than as a substitute, as it was read a first and second time in said house, with the same title as the original bill, and then referred to the committee of the whole house; that at each of its stages as it progressed through said house the title to said committee substitute for house bill No. 87' is given in the journal and record of said house as 'An act to regulate stock yards and providing punishment for a violation thereof,' being the same title as house bill No. 87, as aforesaid; that said house bill No. 87 and said committee substitute for house bill No. 87' never had any other title in said house or in the journals or records thereof than as follows: 'An act to regulate stock yards and providing punishment for a violation thereof;' that after the said bill and substitute entitled 'An act to regulate stock yards and providing punishment for violation thereof' was passed by the house it was then sent to the senate of the State of Kansas with the following title: 'An act to regulate stock yards and providing punishment for a violation thereof;' that the said bill and substitute aforesaid was called up for passage in the senate, an emergency declared by a vote taken therefor, and the bill read a second and third time by title as follows: 'Committee substitute for house bill No. 87, An act to regulate stock yards and providing punishment for a violation thereof;' that after several amendments which were improperly, irregularly, illegally, and unconstitutionally made and adopted thereto the said bill and 'committee substitute for house bill No. 87' passed the senate with the title 'An act to regulate stock yards and providing punishment for a violation thereof;' that said bill and 'committee substitute for house bill No. 87' never had any other title in said senate or in the journal of records thereof than as follows: 'An act to regulate stock yards and providing punishment for a violation thereof;' that neither the house of repre-

sentatives nor the senate of the State of Kansas ever adopted or agreed to the following title, to wit: 'An act defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating all charges thereof, and removing restrictions in the trade of dead animals, and prescribing penalties for violations of this act,' which now appears in the official publication of the said so-called act, made as aforesaid on the 12th day of March, 1897; that the said 'committee substitute for house bill No. 87' never passed the legislature of the State of Kansas with the title of 'An act defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating all charges thereof, and removing restrictions in the trade of dead animals, and prescribing penalties for the violations of this act,' or any similar title; that said title is wholly unauthorized and without any force or effect, because the same was inserted or substituted improperly, illegally, and unconstitutionally, without the consent of either the house of representatives or the senate of the State of Kansas for the title 'An act to regulate stock yards and providing punishment for a violation thereof;' that the act 'The committee substitute for house bill No. 87,' which passed the legislature of the State of Kansas with the title of 'An act to regulate stock yards and providing punishment for a violation thereof,' has never been properly or legally enrolled or approved or published in the official paper of the State of Kansas with its proper title; that the said so-called act now published as
97 'An act defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating all charges thereof, and removing restrictions in the trade of dead animals, and prescribing penalties for violations of this act,' was never passed, adopted, or enacted by the legislature of the State of Kansas according to the provisions of the constitution thereof; that the enforcement or any attempt to enforce the provisions of the so-called act of March 3, 1897, by the defendants or either of them would be contrary to and in conflict with the 14th amendment of the Constitution of the United States and various provisions of the constitution of the State of Kansas, because the said so called act is wholly illegal, unconstitutional, and void and of no force or effect whatever as a law or otherwise."

WAGGENER, HORTON & ORR,
Sol'rs for Complainant, Charles U. Cotting,
By C. J. HUBBARD,
His Duly Authorized Agent.

ALBERT H. HORTON, *Of Counsel.*

STATE OF MISSOURI, } ss:
County of Jackson, }

On this 29th day of March, A. D. 1897, before me personally appeared C. J. Hubbard, of Kansas City, Missouri, being of lawful age, who made solemn oath that he was a duly authorized agent of the said Charles U. Cotting; that the said Cotting is not now in the

tate of Kansas or in the State of Missouri or in any State compos-
ng the eighth United States circuit; that he had read the foregoing
mendment to the bill of complaint, subscribed by the complainant
hrough the affiant as his authorized agent therefor, and knows the
contents thereof, and that the same is true, as he is informed
8 & 99 and verily believes, and therefore so states the fact to be.
And further this affiant saith that notice and knowl-
dge of the matters and things alleged in the foregoing amendment
id not come to the complainant or this affiant until after the filing
f the original bill in said suit and not until a very recent date.
And further affiant saith not.

C. J. HUBBARD.

Subscribed and sworn to before me this 29th day of March, A. D.
897.

My commission as notary public will expire on the 16th day of
November, 1900.

ALEXANDER TYTLER,
[SEAL.] *Notary Public within and for the County of Jackson, State of Missouri.*

M'ch 31st, 1897, received copy of the within notice.

L. C. BOYLE, *Att'y Gen'l,*
By *By* GEO. R. SNELLING,
Ass't Att'y Gen'l.

(Endorsed:) No. 7427. Amendment to bill of complaint. Filed
pril 2, 1897. Geo. F. Sharitt, clerk.

00 UNITED STATES OF AMERICA, } *ss:*
District of Kansas, }

n the Circuit Court of the United States for the District of Kansas,
First Division.

RANCIS LEE HIGGINSON, Complainant,
vs.
ANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants. } No. 7453. In Equity.

Amendment to Bill of Complaint.

Now comes the complainant, Francis Lee Higginson, and, with
ave of the court first had and obtained, amends his bill of com-
laint filed herein as follows, to wit: That after the 8th paragraph
nd part thereof of said bill of complaint, and as paragraph and
art No. 8½ thereof, there is inserted the following amendment, to
it:

"VIII½.

Your orator further complains and alleges upon information and belief, and therefore charges the fact to be, that the so-called act approved March 3, 1897, a copy of which is attached to the bill of complaint as 'Exhibit A' and made a part thereof, is unconstitutional and void in this, to wit, that said so-called act never passed the legislature of the State of Kansas properly, legally, or constitutionally; that on January 15, 1897, a certain bill know- as
101 No. 87 and entitled 'An act to regulate stock yards and providing punishment for a violation thereof' was introduced in the house of representatives of the State of Kansas by a member thereof and was then read for the first time; that on January 17, 1897, this bill was read a second time and referred to the committee on live stock; that on February 3, 1897, the chairman of that committee reported to the house of representatives a 'committee substitute for house bill No. 87' entitled 'An act to regulate stock yards and providing punishment for a violation thereof;' that said 'committee substitute for house bill No. 87' had the same title as the original bill No. 87 aforesaid; that the said 'committee substitute for house bill No. 87' was treated in the house of representatives more as new matter than as a substitute, as it was read a first and second time in said house with the same title as the original bill and then referred to the committee of the whole house; that at each of its stages, as it progressed through said house, the title to said 'committee substitute for house bill No. 87' is given in the journal and record of said house as 'An act to regulate stock yards and providing punishment for a violation thereof,' being the same title as house bill No. 87, as aforesaid; that said house bill No. 87 and said 'committee substitute for house bill No. 87' never had any other title in said house or in the journal or records thereof than as follows: 'An act to regulate stock yards and providing punishment for a violation thereof;' that after the said bill and substitute entitled 'An act to regulate stock yards and providing punishment for a violation thereof' was passed by the house it was then sent to the senate of the State of Kansas with the following title: 'An act to regulate stock yards and providing punishment for a violation thereof;' that the said bill and substitute aforesaid was called up for passage in the senate, an emergency
102 declared by a vote taken therefor, and the bill read a second and third time by title as follows: 'Committee substitute for house bill No. 87, An act to regulate stock yards and providing punishment for a violation thereof;' that after several amendments which were improperly, irregularly, illegally, and unconstitutionally made and adopted thereto the said bill and 'committee substitute for house bill No. 87' passed the senate with the title 'An act to regulate stock yards and providing punishment for a violation thereof;' that said bill and 'committee substitute for house bill No. 87' never had any other title in said senate or in the journal or records thereof than as follows: 'An act to regulate stock yards and providing punishment for a violation thereof;' that neither

the house of representatives nor the senate of the State of Kansas ever adopted or agreed to the following title, to wit: 'An act defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating all charges thereof, and removing restrictions in the trade of dead animals, and prescribing penalties for violations of this act,' which now appears in the official publication of the said so-called act, made as aforesaid on the 12th day of March, 1897; that the said 'committee substitute for house bill No. 87' never passed the legislature of the State of Kansas with the title of 'An act defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating all charges thereof, and removing restrictions in the trade of dead animals, and prescribing penalties for violations of this act,' or any similar title; that said title is wholly unauthorized and without any force or effect, because the same was inserted or substituted improperly, illegally, and unconstitutionally, without the consent of either the house of representatives or the senate of the State of Kansas, for the title
103 'An act to regulate stock yards and providing punishment for a violation thereof;' that the act 'committee substitute for house bill No. 87,' which passed the legislature of the State of Kansas with the title of 'An act to regulate stock yards and providing punishment for a violation thereof' has never been properly or legally enrolled or approved or published in the official paper of the State of Kansas with its proper title; that the said so-called act, now published as 'An act defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating all charges thereof, and removing restrictions in the trade of dead animals, and prescribing penalties for violations of this act,' was never passed, adopted, or enacted by the legislature of the State of Kansas according to the provisions of the constitution thereof; that the enforcement or any attempt to enforce the provisions of the so-called act of March 3, 1897, by the defendants or either of them would be contrary to and in conflict with the 14th amendment to the Constitution of the United States and various provisions of the constitution of the State of Kansas, because the said so-called act is wholly illegal, unconstitutional, and void and of no force or effect whatever as a law or otherwise."

WAGGENER, HORTON & ORR,
Solicitors for Complainant.

ALBERT H. H. HORTON, *Of Counsel.*

104 STATE OF KANSAS,
County of Wyandotte, } *ss:*

On the 30th day of March, A. D. 1897, before me personally appeared Albert H. Horton, of Topeka, Kansas, being of lawful age, who made solemn oath that he is the duly authorized solicitor and agent of the said Francis Lee Higginson, complainant; that the said Francis Lee Higginson is not now in the State of Kansas or the State of Missouri or in any other State of the eight- U. S. cir-

cuit; that said complainant is a resident and citizen of Massachusetts and is now in said State; that affiant has read the foregoing amendment and knows its contents thereof, and the same is true of his own knowledge, except as to the matters therein stated upon information and belief, and these matters this affiant believes to be true.

And affiant further states that notice and knowledge of the things alleged in the foregoing amendment did not come to the complainant or this affiant until after the filing of the original bill in said suit and not until a very recent date, and all of said matters and things were wholly unknown to the complainant and to this affiant when said bill was filed.

And further affiant saith not.

ALBERT H. HORTON.

Subscribed and sworn to before me this 30th day of March, A. D. 1897.

[SEAL.] EVA L. MARTIN,
Notary Public.

Commission expires Dec. 5th, 1899.

MARCH 31ST, 1897.

Received copy of the within notice.

L. C. BOYD, *Att'y Gen.*,
By GEO. R. SNELLING,
Ass't Att'y Gen.

105–107 No. 7453. Amendment to bill of complaint. Filed April 2, 1897. Geo. F. Sharitt, clerk.

108 In the Circuit Court of the United States for the District of Kansas, First Division.

CHARLES U. COTTING, Complainant, *vs.* KANSAS CITY STOCK YARDS COMPANY, a Corporation, *et al.*, Defendants.	No. 7427. In Equity.
FRANCIS LEE HIGGINSON, Complainant, *vs.* KANSAS CITY STOCK YARDS COMPANY, a Corporation, *et al.*, Defendants.	No. 7453. In Equity.

Now comes the said complainants, by their solicitors, Waggener, Horton & Orr, and The Kansas City Stock Yards Company, by its solicitor, I. P. Dana, and L. C. Boyle, as attorney general, in person as well as by his solicitor, David Martin, and the other said defendants also appearing by their solicitor, I. P. Dana.

And thereupon comes on for hearing the application of the complainants for the consolidation of said suits, and, it appearing to the court that the causes are of like nature and relative to the same questions, it is ordered that the said causes shall be consolidated, to

be heard together and as one suit, so as to avoid unnecessary costs in said suits and to prevent delay in the hearing thereof.

And thereupon also comes on for hearing the motion of the complainants to amend their bills of complaint, as prayed for; which motions, upon due consideration thereof, are allowed, and
109-307 the amendments ordered to be filed and made a part of the bills of complaint filed herein, the defendant L. C. Boyle, as attorney general, duly objecting and excepting to filing the amendments to the bills or either of them.

Apr. 2, '97.

CASSIUS G. FOSTER, *Judge.*

(Endorsed:) No. 7427-7453. Order. Filed Apr. 2, 1897. Geo. F. Sharitt, clerk.

308 In the Circuit Court of the United States for the District of Kansas, First Division.

CHARLES U. COTTING, Complainant,
v.
KANSAS CITY STOCK YARDS COMPANY, a Corporation, Defendants. } No. 7427.

FRANCIS LEE HIGGINSON, Complainant,
v.
KANSAS CITY STOCK YARDS COMPANY, a Corporation, ET AL., Defendants. } No. 7453.

Cases consolidated.

This cause further coming on to be heard on the 3d day of April, 1897, upon motion of complainants for a preliminary injunction, the complainants appearing by their solicitors, Waggener, Horton & Orr and D. H. Hite; L. C. Boyle, as attorney general, appearing in person, as well as by his solicitor, David Martin, and The Kansas City Stock Yards Company and the other defendants appearing by their solicitors, Pratt, Dana & Black, further hearing is had upon the objection of the defendant L. C. Boyle, as attorney general, to the hearing or receiving of any evidence on the part of the complainants in support of their motion for a preliminary injunction under the bills of complaint.

And thereupon the court directed the said complainants to introduce and read their affidavits on file in said suits in support of their motion for a preliminary injunction. The affidavits in behalf of the complainants were then duly offered and read as evidence in support of the motion of complainants for the preliminary injunction prayed for, which affidavits, evidence, and the rulings of the court permitting the same to be offered and read were duly objected and excepted to by L. C. Boyle, as attorney general, and thereon, counsel for the respective parties having been heard, the motion of the complainants for a preliminary injunction, together with the affidavits and evidence submitted in support thereof, were taken

under advisement by the court until Monday, April 12th, at ten o'clock a. m.

The above causes further coming on to be heard upon the
309 motion of complainants for a preliminary injunction, as prayed for, the several parties thereto being present by their solicitors, as before stated, the court handed down its written opinion and decision upon certain matters involved in said suits, which it ordered to be filed.

The complainants duly excepted to the opinion, decision, and rulings of the court, as set forth in said written opinion aforesaid, that said act of March 3rd, 1897, referred to in the bills of complaint filed herein, is not class legislation and is not special legislation; that the Kansas City Stock Yards is such a corporation as justifies the legislature in imposing rules and regulations for its government; that the said act of March 3rd, 1897, is applicable to and may be enforced against the defendant stock yards company upon the ground that its business does not come under the designation of interstate commerce; that said act of the legislature is not contrary to or in conflict with the provisions of the act of Congress of May 29th, 1894, entitled "An act for the establishment of a bureau of animal industry, and to prevent the exportation of diseased cattle," and the amendments thereto and the regulations of the Department of Agriculture promulgated thereunder.

L. C. Boyle, as attorney general, also duly excepted to receiving any proof under the said bills, upon the ground that they present no cause of action; that no equity is alleged therein, and that he is improperly made a party thereto, and asks leave to present testimony on his behalf in opposing a temporary injunction. It is thereupon ordered by the court, in order that the court may have all the facts before it, so as to form an intelligent judgment as to whether the preliminary injunction prayed for by the complainants should be granted, that George W. Clark, of Topeka, Kansas, be appointed special master, with power to take testimony and report the same, with his findings, to this court on or before June 1st, 1897, as to all matters and things in issue upon the hearing of the preliminary injunction prayed for under the bills of complaint filed herein, including, among other things, the cost of the Kansas City Stock Yards, the present value of the property of the Kansas City Stock Yards Company, the receipts and expenditures thereof, the manner of its operation, including its transportation
310–322 of cattle and other stock from Kansas to Missouri and other States and from Missouri to Kansas and other States, and the handling of the same as interstate commerce (if any such interstate commerce is carried on by the defendant corporation), and such other matters as may be pertinent upon the hearing of the application for the temporary injunction prayed for; to which reference and the introduction of any evidence before the master under the bills of complaint filed herein, L. C. Boyle, as attorney general, then and there duly excepted, and also to such reference the complainants then and there duly excepted, on the ground that upon the verified bills, affidavits, and evidence already filed

and presented to the court in support of the preliminary injunction aforesaid the complainants are entitled to the granting of such preliminary injunction at once and without any reference or further affidavits or evidence being introduced in support thereof.

The further hearing of the preliminary injunction prayed for is continued to Tuesday, the 1st day of June, 1897, at ten o'clock a. m.

CASSIUS G. FOSTER, *Judge.*

Endorsed: No. 7427, 7453. Order. Filed Ap'l 12, 1897. Geo. F. Sharitt, clerk.

323 UNITED STATES OF AMERICA, *District of Kansas.*

In the Circuit Court of the United States for the District of Kansas, First Division.

CHARLES U. COTTING, Complainant, *vs.* KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants, } No. 7427. In Equity.

and

FRANCIS LEE HIGGINSON, Complainant, *vs.* KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants. } No. 7453.

Order of June 21st, 1897.

And now comes on for further hearing the motion for a preliminary injunction in the foregoing suits consolidated, and, after argument thereon and due consideration thereof, it is hereby ordered and adjudged that the further hearing of said motion be assigned for September 6th, 1897, at ten o'clock a. m., before this court, at Topeka. The special master heretofore appointed in said suits, so consolidated, is directed to make his report of his findings of fact, together with the testimony taken in said suits, on or before August 1st, 1897.

324 It is further ordered, adjudged, and decreed that pending the hearing and until the decision of his court upon the motion for said preliminary injunction that the order of this court heretofore granted restraining and enjoining the Kansas City Stock

Yards Company, its officers and agents, from putting into force th charges and rates prescribed by an act of the legislature of the Stat of Kansas approved March 3rd, 1897, relating to stock yards, an also restraining and enjoining L. C. Boyle, as attorney general o the State of Kansas, from enforcing the provisions of said act again the Kansas City Stock Yards Company, its officers and agents, b continued in full force, virtue, and effect upon the condition tha the complainants within twelve days from this date execute, wit one or more sufficient sureties, to be approved by the clerk of thi court, a bond in the penal sum of seventy-five thousand dollars t George F. Sharitt, clerk of this court, for the benefit of each of th defendants herein, including the said L. C. Boyle, attorney genera of the State of Kansas, and all persons interested or to become in terested in said suits as shippers of live stock from the State of Kan sas or elsewhere to the said Kansas City Stock Yards, conditione to pay all damages that the said defendants or either of them o said shippers shall suffer by reason of the complainants obtainin this order preventing the enforcement of the provisions of an ac of the legislature of the State of Kansas approved March 3rd, 189 relating to stock yards.

CASSIUS G. FOSTER, *Judge.*

(Endorsed :) No. 7427, 7453. Order. Filed June 26th, 1897. Geo F. Sharitt, clerk.

325 UNITED STATES OF AMERICA, } ss:
District of Kansas, }

In the Circuit Court of the United States for the District of Kansas First Division.

CHARLES U. COTTING, Complainant,
vs.
KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants, } No. 7427. In Equity

and

FRANCIS LEE HIGGINSON, Complainant,
vs.
KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants. } No. 7452. In Equity

Bond.

Know all men by these presents that we, Charles U. Cotting, o Brookline, in the county of Norfolk, State of Massachusetts, an

Francis Lee Higginson, of the county of Suffolk, State of Massachusetts, as principals, and we, L. E. James and W. H. Bridgens, of Kansas City, Wyandotte county, Kansas, as sureties, are firmly bound unto George F. Sharitt, clerk of the United States circuit court in and for the district of Kansas, in the penal sum of
326 seventy-five thousand dollars, lawful money of the United States, to be paid to the said George F. Sharitt, his executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the first day of July, A. D. 1897.

Whereas there is now pending in the United States circuit court for the district of Kansas and the first division thereof the motion of the above-bounden Charles U. Cotting and Francis Lee Higginson, complainants, for a preliminary injunction against the defendants in the above-entitled suits, consolidated together, to restrain, enjoin, and prohibit the said defendants and each of them from enforcing in the operation and business of the Kansas City Stock Yards Company the charges, rates, and prices prescribed by an alleged act of the legislature of the State of Kansas entitled "An act defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating all charges thereof, and removing restrictions in the trade of dead animals, and providing penalties for violations of this act," approved March 3rd, 1897; and

Whereas the said motion has been assigned to be heard on September 6th, A. D. 1897, before said court at Topeka, Kansas; and

Whereas the said Charles U. Cotting and Francis Lee Higginson, complainants in the above-entitled suits, did obtain on the 21st day of June, A. D. 1897, a temporary order in the above-entitled court restraining, enjoining, and prohibiting the defendants in the above suits and each of them from enforcing in the operation and business of the Kansas City Stock Yards Company the charges, rates, and prices prescribed in the said act of the legislature of the State of Kansas approved March 3rd, 1897, until the hearing and decision of the said court upon the motion for a preliminary
327 injunction, as aforesaid:

Now, the condition of this obligation is such that if the said motion for injunction be denied and if said alleged act be held on final judgment wholly valid, constitutional, and binding upon said Kansas City Stock Yards Company, and then if the said Charles U. Cotting and Francis Lee Higginson shall not well and truly pay or cause to be paid to the above-named George F. Sharitt, clerk of said court, as aforesaid, for the benefit of L. C. Boyle, defendant, as aforesaid, and for the benefit of all persons doing business with the said Kansas City Stock Yards Company as shippers of live stock, such damages as the said defendant, Boyle, and said shippers shall have sustained after the date hereof by reason of the charges exacted of them by the said Kansas City Stock Yards Company in excess of the provisions of said alleged act by reason of the said order of June 21st, A. D. 1897, restraining the

defendants, as aforesaid, from enforcing the provisions of the sai act and all other damages resulting to them therefrom, then th above obligation to be in full force and effect; otherwise to be wholl null and void.

CHAS. U. COTTING. [SEAL.]
FRANCIS LEE HIGGINSON. [SEAL.]
L. E. JAMES. [SEAL.]
W. H. BRIDGENS. [SEAL.]

328 STATE OF MISSOURI, } ss:
County of Jackson, }

L. E. James, being first duly sworn, deposes and says that he i now and has been for many years a resident and citizen of th county of Wyandotte, in the State of Kansas; that his signatur to the foregoing bond is genuine, and that he is worth, over an above all exceptions, debts, and liabilities, the sum of seventy-fiv thousand dollars.

L. E. JAMES.

Subscribed and sworn to before me this 1st day of July, A. D 1897.

[SEAL.] JOHN H. CRANDALL,
Notary Public.

My commission expires August 29th, 1900.

329 STATE OF KANSAS, } ss:
County of Wyandotte, }

William H. Bridgens, being first duly sworn, deposes and say that he is now and has been for many years a resident and citizen of the county of Wyandotte, in the State of Kansas; that his signa ture to the above and foregoing bond is genuine, and that he i worth, over and above all exemptions, debts, and liabilities, the sum of twenty-five thousand dollars.

W. H. BRIDGENS.

Subscribed and sworn to before me this 1st day of July, A. D. 189

[SEAL.] JOHN A. ADAMS,
Notary Public.

Commission expires Nov. 15th, 1899.

(Endorsed:) No. 7427. U. S. circuit court, district of Kansas Chas. U. Cotting *vs.* Kansas City Stock Yards Co. *et al.* Bond Filed and approved July 2, 1897. Geo. F. Sharitt, clerk.

330 In the Circuit Court of the United States in and for the District of Kansas, First Division.

CHARLES U. COTTING, Complainant,
vs.
KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants. } No. 7427.

FRANCIS LEE HIGGINSON, Complainant,
vs.
KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants. } No. 7453.

Causes consolidated.

Report of Special Master.

To the honorable judges of said court:

I have the honor to report that pursuant to your order of April 12, 1897, appointing me special master to take evidence and report the material facts in the above-entitled causes, I took the oath of office and, at the request of the complainants and upon the agreement of the defendants, on the thirtieth day of April I proceeded to Kansas City, Missouri, and there entered upon the discharge of my duties under said appointment. The complainants introduced their evidence-in-chief; the defendant, Louis C. Boyle, as attorney general of the State of Kansas, introduced his evidence, and the complainants closed with evidence in rebuttal. In all, twenty-five days were consumed in the work, and about 5,000 folios of oral testimony and a very large volume of documentary evidence was taken. The importance of an early hearing was evidently appreciated, and all parties cheerfully co-operated to secure expedition and dispatch in the taking of the evidence.

As the issues have not yet been made up, the scope of the proofs could not be forecast or definitely limited except so far as it was indicated by the order of reference. To the extent that the subjects of proof were particularized by said order it has been observed and followed with reasonable strictness. Under the general order requiring the taking of evidence on other subjects pertinent to
331 the questions involved, a wider range has necessarily resulted.

It is therefore believed that a brief statement of the contentions of the parties, as they developed from time to time, may serve the useful purpose of exhibiting to the court the character and scope assumed by the inquiry in the proofs and in the arguments before the special master.

The primary contention of the complainants is that to ascertain the real value of the property of the Kansas City Stock Yards Com-

pany, it should be treated as a unit, as a completed system of stock yards, with all attachments and connections, and as a live, going concern, and they have put forward three methods of ascertaining that value:

First. By ascertaining, separately, the present value of the physical property, real and personal, owned and used by the company, for stock-yards purposes, adding thereto the value of the good will or the business which exists at the stock yards, basing both of such values upon the cost of reproduction, thus differentiating the property from naked lands and buildings.

Second. By ascertaining the market value of the capital stock of said company prior to the passage of the statute in question, less the value of any property owned by it, not used for stock-yards purposes, such value being coincident with the value of the stock-yards plant as an entirety.

Third. By capitalizing the net earnings of the plant at the prevailing rates of interest, deducting therefrom the value of any property which may not fairly be deemed a part of this completed structure, and used for stock-yards purposes.

The attorney general denies the correctness of these methods, and insists:

First. That the only value of the property to be at all considered in an inquiry of this character is that of the tangible, physical property of the company; that that of the real estate is to be determined by considering it as a body of naked land upon the general market subject to purchase and sale for all purposes for which a demand may exist—for stock yards, for railroads, for packing-houses, for manufacturing or mercantile purposes, with all the advantages which may accrue to it in consequence of its location near the corn belt, as well as cattle ranges of the country, in the heart of a great city, surrounded by all the railroads, packing-houses, manufacturing and mercantile plants now in existence, and in operation, and by reason of the limited area of land in the vicinity available for such purposes.

332 Second. That the buying and selling of the stock of the Kansas City Stock Yards Company on the market, as disclosed by the record, has not been sufficiently general and common to afford trustworthy evidence of its value; that the occasional sales of a few shares, as testified to by the witnesses, furnish no safe criterion for determining the value of the company's property; and to the complainants' proof of the value of the good will or business of the defendant company, he especially objects, for the reason, as claimed by him, that the State of Kansas is in nowise seeking to take anything from the defendant; that nothing is in fact taken from it; that its good will or business is in no degree regulated, disturbed or diminished, and is not, therefore, a proper element of value to be considered in these cases.

The complainants and the attorney general have offered proof of the history, character and amount of the capital stock of the defendant company and its predecessors from 1871 down to the present year, showing particularly the various increases of capital stock, the

amount paid for in cash, the amount issued by way of dividends to represent earnings invested in the property, the amount issued to represent increased valuation of lands and other property belonging to the company, and to companies and individuals as bonuses to secure the location of packing-houses in the vicinity of the stock yards, together with a statement of the cash dividends paid during the same period. This evidence was believed to be pertinent to the questions referred to the special master, and, with voluminous testimony on the subject of cost and present value of the property of the defendant company, earnings and expenditures, and manner of operation in respect to interstate commerce, if any such be carried on at said yards, was admitted, and is hereby returned into court, with all exhibits properly identified.

Careful consideration has been given to the claims of the parties as above outlined, and it is believed that the various phases of the questions upon which evidence was admitted are fully presented to your honors in the findings which follow:

I.

In 1870, Abilene and Fort Dodge, in Kansas, had become objective points for the large herds of cattle being driven from Texas en route to eastern markets. Prior to that year certain railroad com-
333 panies, whose lines ran into Kansas City, had constructed on the Kansas side of that city four large cattle pens, covering about two acres of ground, which were termed Union stock yards, and which were used in common by such railroad companies in which to feed, water and rest stock in transit to other points. In the summer of 1871, one Octave Chanute and his associates conceived the idea of engaging in the business at Kansas City of feeding these cattle, and pursuant thereto they purchased in that year the lands upon which the yards had been so constructed and operated by the railroad companies, and about twenty-eight and one-half acres in addition thereto, and in the following September duly incorporated under the laws of Kansas under the name and style of the Kansas Stock Yard Company, with an authorized capital stock of $100,000, and with its authorized place of business in Wyandotte county, Kansas, in the vicinity of the mouth of the Kansas river.

The object of such incorporation was, as set forth in the charter, the construction, operation and maintenance of union stock yards, and the erection of such cattle yards, buildings, hotels, railways and switches as might be necessary for the safe care of stock of all kinds which might be transported by railroad.

2.

The real estate purchased by said parties as mentioned in finding No. 1, may be described generally as being bounded on the north by the lands of the Union Pacific Railway Company, on the east by the State line between Kansas and Missouri, on the south by the center of Turkey creek, and on the west by the Kansas river.

Owing to artificial means which have been employed from time to time since said purchase, the area of this tract has been increased about twelve acres by accretions along the river bank.

III.

After the purchase of said real estate the said stock yard company proceeded to grade portions thereof, and to construct thereon cattle pens and other improvements, preparatory to engaging in the stock-yards business, which it did to a limited extent in the year 1871. Without any special thought of a market at Kansas City, representatives of Chicago commission-houses located there to influence business to their respective houses. In time, these representatives began to sell cattle to speculators, thus starting a market at Kansas City, which has grown to its present magnificent proportions.

334 4.

The total number of live stock received at said yards during the year 1896, including such as was in transit to other markets, was 5,471,246, being 1,714,532 cattle, 100,166 calves, 2,605,575 hogs, 993,126 sheep, and 57,847 horses and mules. Of this number about 95½ per cent. of the cattle, calves and sheep, and practically all of the hogs, were sold in the yards at Kansas City.

There is presented herewith a certain map of the United States, marked Exhibit K, on which is marked in red the number of head of live stock received at the Kansas City stock yards in 1896 from each State, and I find that the numbers so shown on said map correctly represent the receipts of said yards during said year.

There is also presented herewith tables marked respectively I and L, showing the States in which all live stock received and handled by the said Kansas City stock yards in 1895 and 1896 originated, and the disposition of said live stock by said company during said years.

V.

At the date these yards were opened by the Kansas Stock Yard Company, there were no packing-houses at Kansas City, but soon thereafter a small one was established by Bigger & Company, with a daily capacity of from 100 to 150 hogs. This was followed by the erection of several beef, pork and mutton packing establishments in the immediate vicinity of the yards, with a large capacity for the slaughtering of live stock, amounting in 1896 to 894,537 cattle, 58,331 calves, 2,263,143 hogs, and 685,727 sheep. Many of these establishments were secured to locate at Kansas City and in the immediate vicinity of the yards by the energetic, persistent and continued efforts of the defendant company, and of the company to whose rights it succeeded as hereinafter set forth, by the payment of large sums of money, the conveyance of valuable real estate, and the issuance and delivery of shares of its capital stock, all of which were

made as donations, and without other consideration than as above set forth, and were as follows:

Date.		Cash.	R. E.	Stock.
1879	Fowler Brothers	$50,067.18		
1883-'4	Schwarzschild & Sulzberger	100,000.00		
1879	Fowler Brothers		$30,500.00	
1883	Swift & Company		62,175.00	
1884	Hollis & Company		2,070.00	
1887	Kingan & Company		33,132.10	
1879	Fowler Brothers			$40,000.00
1892	Armour Packing Company			500,000.00

335 The cash and the value of the estate so donated were either earned by the company in addition to the cash and stock dividends declared by it, or paid out of the sales of stock for cash; and the holders of the $540,000 so issued have participated regularly in all dividends declared by the company since such issuance. All of these companies are now actively engaged in business near the yards, except Kingan & Co. and Hollis & Co., neither of which has been in business for at least two years last past.

VI.

As before stated, the Kansas Stock Yard Company was duly incorporated in September, 1871, with an authorized capital stock of $100,000, $96,000 of which was at once paid for in cash. Growth in business and in territory was immediate, and went steadily forward. On February 13, 1875, the capital stock was increased to $200,000. In 1876, the company reorganized under the name of the Kansas City Stock Yard Company, with an authorized capital stock of $500,000, and in July following the old corporation conveyed to the new the real estate described in finding No. 2, and other lands, which lay north of the Missouri Pacific Railway yards, which are referred to hereafter as the "north yards." In November of the following year the capital stock of this company was increased to $1,000,000. On December 10, 1883, the company again reorganized, this time as the Kansas City Stock Yards Company, with a capital stock of $2,500,000, and on January 1, 1884, the said corporation received from its predecessor a deed of conveyance to all the property owned by it, the expressed consideration being $5, and the assumption by the grantee of all the debts, duties and obligations of the grantor, and issued to the stockholders of the prior corporation certificates of stock aggregating the par value of $1,990,000, each of such stockholders receiving two shares for each share held by him at that time in said last-mentioned corporation. No cash was paid for any of the stock so issued. The stockholders in the two companies at said time were identical. Since January 1, 1884, all the business at the Kansas City stock yards has been performed by the Kansas City Stock Yards Company. In July,

1887, the authorized capital stock of the company was increased to $5,000,000, and in February, 1894, to $7,500,000. On December 31, 1896, there had been issued, and was then outstanding, the
336 amount at par value of $7,368,650. Hereafter, in these findings, whenever reference is made to the owner of these stock yards, I shall not attempt to further distinguish between the three companies before named, but treat them as being one and the same.

VII.

During the taking of the evidence, by agreement of the parties, and upon the order of the special master, a survey and map of certain lands belonging to the company were made. The map is marked Exhibit Z, and shows the relative locations of the several tracts, by the designations A, B, C, D, E, *e*, and "a small tract cut by James street," in order to correspond with the designations used by the witnesses in their testimony. The tract described in finding No. 2 is B on the map, and is sometimes referred to in the record as the main yards in Kansas. Its original cost was $36,750, but the company has disposed of .671 of an acre for $4,444.47, and now holds 1.302 acres at the southwest corner, in such shape that it is not, and cannot be advantageously used for stock-yards purposes, and it is not, therefore, here considered. The net area of the tract to the water's edge on the day of the survey (which was about the average stage) was 40.493 acres; to the outer edge of the revetment, 40.826 acres. There is no evidence showing the area to ordinary low water. I have therefore adopted as the approximate area, one-half the sum of the two measurements, which is 40.659 acres. The present net cost of the tract was $32,395.53, augmented to a total of $230,110.81 by cost of grading and other proper charges.

VIII.

About 1876 the company acquired title to certain lands lying north of the tract B and the yards of the Missouri Pacific and Union Pacific Railway Companies. That portion of said lands now used for stock-yards purposes may be generally bounded as follows: On the north by Seventh street, on the east by First (formerly Wood) street, on the south by the Missouri Pacific Railway yards, and on the west by the west line of Water street, produced south to said railway yards. It is designated on said Exhibit Z as "E," contains 14.9 acres, and is sometimes mentioned in the record as the "north yards." The company claims to own a strip of land along the north line of this tract seventeen and one-half feet wide, and containing .262 of an acre, extending to the center of Seventh street. As it is not occupied for stock-yards purposes, and has been used for a number of years as a public high-
337 way, I have thought proper to exclude it entirely in estimating the area of the north yards. The evidence is not clear as to the cost of this subdivision of the yards, but it will approximate $29,000. Adding the expense of grading and other proper charges, amounting to $11,594.72, the total cost was $40,594.72.

IX.

About the year 1876 the company purchased for stock-yards purses 49.5 acres of land in Missouri, adjoining the southern half of ie main yards in Kansas, but subsequently abandoned the idea of ing it for such purpose, and after having sold 1.187 acres thereof, December, 1883, it conveyed the remainder, together with another act of 1.976 acres, which lay south of Central avenue, and between ate Line and Ewing streets, of the aggregate value of $221,815, to trustee for the benefit of the stockholders, the transaction being the nature of a real-estate dividend.

X.

From 1876 to 1886, inclusive, the company purchased numerous ty lots in Missouri adjoining the main yards in Kansas, at a cost $185,198.13, which were at once improved and made use of for ock-yards purposes.

XI.

In 1886 the stock yards company purchased from one McAlpine .86 acres of land lying west of the Kansas river, and opposite the ain yards in Kansas, paying therefor $97,510. From this tract it s parted with the title to 13.087 acres for $66,595, and 1.637 acres not used for stock-yards purposes. .322 of an acre had been added accretion, so that the net area used for stock-yards purposes is .458 acres, and the net original cost $30,915, which, enhanced by st of filling, grading, etc., $71,744.44, makes the total net cost of e tract $102,659.44. This tract is designated on the map as C, d is known and referred to in the record as the quarantine yards, the quarantine division.

XII.

In 1887 additional city lots in Missouri were purchased at a cost $30,000. Upon them stands the building referred to in the cord as horse barn No. 2, and sometimes as the Gould barn, by which name I shall hereafter refer to it. This building is 8 devoted to the care of a large number of horses, wagons, etc., belonging to and used by the company, and to the boarding about 100 horses owned by commission firms operating at the rds.

XIII.

In 1893–'4, and 1895, the yards in Missouri were extended uthward and eastward into the business and residence portion of nsas City. Many of these lots were occupied by valuable business d residence buildings, which were necessarily removed, as not ng available for stock-yards purposes. The total cost of such real ate, after deducting the amount received for buildings removed, s $1,290,133.

XIV.

In 1894 the company purchased three lots on the east side of Genesee street, at a cost of $17,750, and conveyed a part thereof to the public for a highway, in return for the vacation of a portion of said street, which resulted in straightening the east line of the yards in Missouri. The difference between the purchase price and the present value of the fractional part of said lots remaining (still owned by the company) is $10,750.

XV.

The lands mentioned in findings Nos. 10, 12 and 13, constitute tract A, and comprise what is sometimes referred to in the record as the main yard in Missouri, including all the land which was formerly occupied as streets and alleys, but which have evidently been vacated, the total acreage is 41.708; the total cost was $1,691,619.59.

XVI.

It will thus be seen that the actual area of the real estate owned and used by the Kansas City Stock Yards Company in the operation of its yards, and the cost thereof, is as follows:

Main yards in Missouri (finding No. 15),	41.708	acres, cost	$1,691,619.59
Main yards in Kansas (finding No. 7).	40.659	" "	230,110.81
North yards (finding No. 8).....	1.900	" "	40,594.72
Quarantine yards (finding No. 11)...	13.458	" "	102,659.44
Making a total of...	110.725	" "	$2,064,984.56

And the stock yards company owns no other real estate which it uses for stock-yards purposes.

XVII.

In addition to the lands above described, the company leases and uses as essential parts of system the following lands in Kansas:

13.97 acres from the Union Pacific Railway Company, 5.75 from the Missouri Pacific Railway Company, and 3.02 from the
339 Chicago, Rock Island & Pacific Railway Company and the Kaw Valley Townsite & Bridge Company.

XVIII.

The largest portion of the earnings of the company in 1896 were derived from the *per capita* charges upon live stock sold in the yards, which were as follows: Upon cattle, 25 cents; calves, 10 cents; hogs, 8 cents; and sheep, 5 cents. These charges are identical with those which prevail at the yards at St. Louis, East St. Louis, Omaha, Denver, Pueblo, Cincinnati and Sioux City, and substantially the same as at Chicago, Fort Worth, St. Paul, Louisville and Indianapolis. From 1871 to 1893 the yardage charge upon cattle at the Kansas City yards was 20 cents *per capita*. In 1896 the en-

ire number of live stock sold in said yards, for which yardage fees vere charged, was as follows: Cattle, 1,619,363; calves, 95,634; iogs, 2,594,465; sheep, 873,934. No yardage charge is made unless he stock is sold in the yards, but no matter how often the title to tock may change, or how long it may remain in the yards after eing sold, there is but one yardage charge.

XIX.

For the *per capita* charge mentioned in finding No. 18 the com- any furnishes whatever yard or pen space is required by the owner o exhibit his stock to the best advantage for sale, he having the rivilege of dividing a car-load into as many different lots and sing as many pens as he desires. It furnishes standard scales pon which it weighs the live stock sold in the yards, whenever nd in such quantities as owners desire. In 1896 there was an verage of more than 500 drafts of live stock in each day. It re- ords all transfers from seller to buyer, and furnishes certificates of eights upon which all sales are settled.

XX.

The source of income next in importance is the sale of feed, being 1896 $187,994.69, after deducting the cost of the feed, which was the best quality, but nothing for the expense of handling and elivering it. No one is permitted to sell or feed hay or grain in e yards except the stock yards company. The charges which pre- ailed during 1896 were $1.00 per cwt. for hay, and $1.00 per bushel r corn, which were identical with those made at Omaha, St. Louis, ast St. Louis and Denver. At Pueblo, Chicago and St. Louis the arge for timothy hay is $1.50 per cwt.

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XXI.

The services performed by the company in connection with the le of feed and included in the foregoing prices, *was* and *is* as fol- ws: It delivers the feed at such places and in such quantities as ay be required by the purchaser, distributes it in troughs in the ns conveniently for consumption, and furnishes all the water the imals can consume, without additional charge, as part of the feed. e delivery of the feed in the small quantities usually required, asions greater expense than would be necessary if deliveries ld be made in larger quantities, but this increased cost is nearly ercome by the large number of deliveries so made. All of the d is sold and paid for in Missouri.

XXII.

While the stock yards company neither owns, operates nor uses railway motive power, or rolling stock, nor has any connection h or interest in the transportation of live stock to or from the ds, except as hereinafter set forth, it is a party to contract with all he railroad companies delivering live stock at its yards, by which

it receives from such companies the sum of fifty cents per car-load for stock unloaded by it at the yards. When stock is received in the night-time, in addition to the service of unloading it the stock yards company drives it through its chutes, alleys, over viaducts and bridge, and through tunnels, or some of them, to pens selected by itself, for delivery to the owner or consignee; under these contracts the defendant company also receives from the railroad companies fifty cents per car for loading live stock which is purchased in the yard, and transshipped to other States. Upon the receipt by it from the shipper of an order to deliver such stock to a railroad company, the stock yards company takes it from the pens where it is awaiting disposition, drives it in the manner above explained to the point where the cars await it, loads the same into such cars, and properly closes the doors. In carrying out said contracts the defendant company daily uses the railroad tracks owned by it, and referred to in finding No. 27, and in 1896 it handled 113,594 carloads of incoming, and more than 40,000 of outgoing stock, for which it received the sum of $76,803.

XXIII.

In 1896 the defendant company received an income of $68,706.73 from rents. Of this sum $53,699.28 was paid by commission
341 merchants for the use of rooms in the large office building in the yards, owned and occupied by the company, and known as the Exchange building. The erection and maintenance of this building affords convenient and valuable advantages to all persons concerned in the purchase and sale of live stock at the yards.

It is the business of these commission men to buy and sell live stock upon commissions paid by their customers. No charge is made to them, nor to packers, buyers, or traders for the use made by them of the yards.

The stock yards company has no interest in the sales, and takes no part in negotiating them.

XXIV.

In the southeast corner of the main yards in Missouri, comprising 6.676 acres, is the horse and mule department of the defendant company. This land was purchased in 1893–'4 at a cost of $230,643.86. The improvements thereon, consisting mainly of large brick stables, hay barns, sewer and water mains, etc., cost about $130,000; total cost, $360,643.86. This department is devoted exclusively to the reception, care and sale of horses and mules.

The business is conducted upon a plan peculiar to itself; it is under the supervision and management of one W. S. Tough, under a contract by which he receives one-half the net profits in lieu of a salary. When horses and mules are received at the yards, they are at once taken to this department. For forty cents per day for each horse, and twenty-five cents for each mule, they are cared for by the company's employés, in large pens, and given all the feed and water

they will use, and are also caught, harnessed and worked whenever desired by a customer. For fifty cents per day horses are fed, cleaned and groomed in stalls.

XXV.

Prior to January, 1897, the patrons of the horse and mule department whose stock was sold by the management, paid a commission of two dollars for each horse, and one dollar for each mule so sold. They were, however, accorded the right to sell the stock themselves, without charge. 57,847 horses and mules were received in 1896, affording a revenue to the company from sales of $19,116.20. On January 1, 1897, the company ceased the business of selling on commission, and turned it over to several commission merchants, to whom the use of the stables and offices therein are furnished, the company receiving as compensation from them the sum of 25 cents for each animal sold by them.

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XXVI.

As may be inferred from previous findings, the plant or system of yards operated by defendant company is situated on both sides of the Kansas and Missouri State line. A little less than one-third of the entire area is in Missouri, the remainder in Kansas, from which State the company has always derived the largest part of its receipts.

The native cattle division is partly in Kansas and partly in Missouri; the State line, however, in no way controls the treatment or disposition of such cattle with respect to yardage, sale or feed. The quarantine grounds, and all the sheep and hog divisions are also located in Kansas. All sales of hogs and sheep, and all deliveries of such stock by the railroad companies are made in Kansas, and all that are shipped out are loaded from chutes and pens located in Kansas. Practically all the live stock that is received by the company is received in Kansas, and such as is shipped out, loaded into cars from chutes located in Kansas.

When live stock is sold to local packers, after being weighed, it is driven by the employés of the stock yards company to large pens set apart for that purpose, where it remains until required for slaughter. No charge is made to these packers for such use of these pens.

XXVII.

There are nine railroad tracks located upon the company's ground, seven of which are in Kansas and two in Missouri. Eight of them are used by the railroad companies for the delivery into, and shipping of live stock out of, the yards. No charge is made to them for the use of said tracks.

XXVIII.

The tracks of eleven separate railway companies connect at the yards with those of the stock yards company. Said yards have

about fifteen miles of alleys, two tunnels for stock, one and a ha
miles of stock viaducts, a large bridge spanning the Kansas rive
some of which are used daily by the owners and shippers of liv
stock, commission men, buyers and forwarding merchants, the
agents, servants and other persons engaged in traffic in live stoc
in going from one of these States to the other, and in transportin
moving and driving the same from Missouri to Kansa
343 and from Kansas to Missouri, to be weighed for sale, shi
ment to some other State, and for slaughter. The severa
packing establishments mentioned in finding No. 5 are located
the vicinity of and communicate with the stock yards by means
driveways, alleys and viaducts. In 1896 one large packing-hous
in Missouri purchased at the yards for slaughter, 35,511 cattl
309,613 hogs, and 15,295 sheep, and agents of corporations and pe
sons, citizens of other States than Kansas and Missouri, purchase
for shipment to such persons and corporations beyond the bound
aries of Kansas and Missouri, 386,432 cattle, 333,818 hogs, an
204,388 sheep.

XXIX.

There is located within the State of Missouri, situated just sout
of the Exchange building, a group of cattle pens known as th
"shipping division," which adjoins and communicates with th
railroad tracks owned by the stock yards company, and used pa
ticularly in the preparation for shipment of cattle purchased in th
main yards of the company. This group of pens is connected b
means of alleys with the viaduct system of the stock yards, and
designed for and daily used in the movement of cattle purchase
in Kansas and Missouri for shipment largely to other States. Aft
cattle are sold in the main yards, whether in Kansas or Missour
for shipment, they are usually driven to the nearest approach t
the viaduct system, then over the viaducts (which are overhea
driveways), which begin at a point in the State of Kansas near th
southwest corner of the north yards, and from thence continue wit
various angles and branches in a general southerly direction abou
2,500 feet (one branch connected with the Kansas River bridge) t
a point where it turns east about 500 feet, crossing the State lin
thence south about 400 feet to the shipping division. From thi
shipping division, the cattle are loaded upon the cars belonging t
the different railroad companies, standing upon the stock yard
company's tracks, to be transported to other points. In 1896, an
during each of several years prior thereto, several hundred thou
sand head of cattle were thus disposed of.

XXX.

In 1896 there were received at the stock yards about 100,00
head of live stock, consigned by the shipper, to be transported b
the railroads connected with the tracks of the stock yard
344 company, to points in States other than Kansas or Missour
All of said live stock was unloaded by the defendant com

pany, cared for, rested, watered and fed, and when necessary moved by it over, along and upon its alleys, viaducts, tunnels and bridge, to the outgoing railroad named in the bill of lading accompanying said stock, to be transported to the point of final destination. All of the expenses connected with the caring for, feeding and watering of such live stock *was* paid to the stock yards company by the railroad companies, and by them ultimately collected from the consignee.

XXXI.

The quarantine division is operated and maintained by said defendant company in conformity to the provisions of an act of Congress, and under the personal direction, as to sanitary requirements, of the U. S. Government live-stock inspector, resident at the yards. Except as hereinafter stated, this division is, between the fifteenth of February and the fifteenth of November of each year, under said act and the rules and regulations of the U. S. Department of Agriculture, devoted chiefly to the care, movement, and sale of cattle originating south of a certain geographical line designated annually by the Secretary of Agriculture. Occasionally, however, these yards are used for the yarding of native cattle sold for immediate slaughter. During the year 1896 over 300,000 cattle were handled by the stock yards company in this division. It is connected with the main yards by the bridge before mentioned, which spans the Kansas river. A considerable number of the cattle originating south of the quarantine line are unloaded on the east side of the Kansas river into specially designed chutes, and by the employés of the company driven across the bridge to the quarantine division and delivered to the consignee. All cattle purchased at the quarantine division by the beef-packing establishments heretofore mentioned located in Missouri, are driven by the purchaser from said division across the bridge, and over and along the alleys and viaducts of the defendant company to said packing establishment. The geographical line heretofore referred to lies south of the southern boundary of Kansas.

XXXII.

In addition to the live stock mentioned in finding No. 30, about 40% of all the stock received at the Kansas City stock yards
345 in 1896 was originally consigned to other States than Kansas, but with the right to expose said property for sale at Kansas City. With the exception of about 100,000 head, described in finding No. 30, the live stock so billed through was sold at the Kansas City stock yards. All of the services in and about the handling of all live stock by the defendant company at the yards was and is performed prior to its sale, except driving to cars to be loaded, and all the fees and charges made by the company mentioned in the exception last herein set out, were and are earned prior to its sale.

In 1896 the receipts of the defendant company, as shown by its profit and loss account, were $1,023,870.20; the expenses charged against them in the same account were $368,059.05; thus showing

the net profits for the year to have been $655,811.15. I find t
amount to be correct, unless it is to be diminished by reason of
penditures not included in said account, and which are set out
finding No. 33½. The sources of said receipts were as follows:

Yardage of cattle, calves, hogs, and sheep weighed in the yards	$665,658
Net income from hay and grain of all kinds sold and fed	187,994
Commissions received from horse and mule department from sale of horses and mules	19,116
Loading and unloading cars of live stock	76,803
Rentals from buildings belonging to the company	68,706
Dividends, interest, and premium	5,591
Total	$1,023,870

But from this sum should be deducted the $5,591.53 as divide
interest, and premium, and $6,007.45 received as rent for outs
property, which would leave the gross income $1,012,271.22.

The expenditures which were charged in the profit and loss
count are found to have been incurred as follows:

For all labor that goes into the expense of operating the yards, including the salaries and wages paid to officers and employés in the various departments and divisions, (except as stated in the two succeeded entries)	$211,26
For labor and material required to make necessary repairs on the yards	22,309
Cleaning the yards	8,116
Repairing wagons	21
Advertising, traveling expenses of agents, stationery, fuel, postage, supplies, telephone service, license fees, horseshoeing, and worthless accounts charged off	66,191
Taxes	22,67
Premiums on policies of insurance	12,83
Rents paid for leased grounds	7,200
Live stock lost, injured or damaged	1,29
W. S. Tough, as manager of horse and mule department	5,96
Total disbursements	$368,05

From which should be deducted $2,346.56, the amount paid as ta
on property not used for stock-yards purposes, which would sh
the cost of operating the plant to have been $365,712.49, and indi
a net profit of $646,558.73.

XXXIII½.

I find, however, that in addition to the amount charged in
profit and loss account as expenses, the company paid out

346 its earnings in 1896 large sums of money which it charged to "construction account." The items going to make up this account may be classified as follows:

Extending and enlarging water and sewer mains, rendered necessary by reason of a rearrangement of the system and structures	$6,342.49
New viaduct, chutes and fences, brick paving, sheep sheds, completion of the power plant and of the new addition to Exchange building, begun in 1895, new hay and grain barns, and other buildings, all being original construction and extension of improvements where there had been none before	109,481.56
Enlarging, remodeling and reconstructing old buildings	10,597.97
Railroad track "lifting jack"	7.42
New office furniture	1,052.44
Brick paving in pens and alleys to replace worn-out plank flooring, this expenditure adding its cost to the value of the plant	38,002.64
Rebuilding and extension of hog pens, the betterment amounting in value to	4,420.65
Total	$169,905.17
On which was applied a credit of	320.52
Leaving net cash expenditure, charged to construction acc't	$169,584.65

The items of expenditure going to make up this sum are, in their nature, identical with those which had been previously charged to construction account. Since 1892 the structures and other improvements made in the yards have been of a more permanent character than those of an earlier construction, and the expenditures therefor were treated by the company as new investments—as adding materially to the value of the plant, as evidenced by the fact that prior to 1896 stock was regularly issued based upon such expenditures, and distributed among the stockholders in proportion to the number of shares held by each. But in 1896 there remained unissued of the capital stock, but $131,350, which had been tacitly set apart for some special use, and the amount of such construction account is being carried on the books of the company as a charge to its surplus account, which is in excess thereof. If, as contended by the complainants, this $169,584.65 is properly chargeable to earnings as operating expenses or cost of maintenance, the net income instead of being as stated, $646,558.73, was only $476,974.08.

XXXIV.

The attorney general contends that as the statute simply regulates the charges which the stock yards company shall be permitted to make for yardage of cattle, calves, sheep and hogs, and prescribes

the maximum prices which it shall receive for feed sold in the yards, that that branch of the business which has to do with the care and handling of horses and mules should be entirely excluded from consideration in determining the question whether the rates prescribed by the statute would accord a reasonable return to the owners of the yards for such services and feed.

347 The receipts of the horse and mule department were as follows:

Net income from hay and grain sold, represented by the *per capita* charges mentioned in finding No. 24, $57,225.44, diminished by $29,839.85, the cost of such feed	$27,385.59
Commissions on sales	19,116.20
Profits of blacksmith shop	784.85
Total	$47,250.64

The disbursements covering the same period were:

For labor	23,645.40
For repairs to wagons	212.73
Supplies and shoeing	6,898.78
Advertising, insurance, telephone, license and postage	4,559.43
Taxes	2,176.40
Paid W. S. Tough, manager	5,967.15
Total	$43,459.89

Showing a net income of only $3,790.75, or a profit of a small fraction over 1½ % on the original cost of the property so used, or $\frac{88}{100}$ % of its present value. If the theory advanced by the attorney general should be adopted by your honors, it will be found that by eliminating the horse and mule department, whose present value is $430,420, the cost of the tangible property used for stock-yards purposes was $3,421,941.81; that the receipts in 1896 were $965,020.58; disbursements, $322,252.60, and net income, $642,767.98, which would show a net profit of 18.78 % on the original cost of the property, 12.97 % on its present value, and 6 % on a capitalization of $8,262,638.75.

XXXV.

The amount received by the company in 1896 for yardage of cattle, calves, hogs and sheep was $665,658.05, and from the sale of hay and grain outside of the horse and mule department and the Gould barn, $224,690.88, or a total sum of $890,348.93. Under the charges, rates and prices prescribed by the statute, the revenue from those two sources would have been as follows:

Yardage:

Cattle, 1,619,363 head at 15 cents	$242,904.50
Calves, 95,634 head at 8 cents	7,650.72
Hogs, 2,594,465 head at 6 cents	155,667.90
Sheep, 873,934 head at 4 cents	34,957.36
	$441,180.48
Hay and grain:	
Cost, $74,258.34; sold for 100 % advance	148,516.68
Total	$589,697.16

This shows that had the statutory rates been applied to the business of 1896, the total net income would have been $300,651.77 less than it actually was. The net income would then have been $345,906.96. If, however, the items mentioned in finding No. 33½ are to be treated as operating expenses, properly chargeable to the earnings, then the net income would have been $176,322.31.

XXXVI.

48 Frequently shippers purchase hay and grain from outside parties and feed their live stock in the cars before reaching the yards in order to avoid the payment of the charges made by the company, which they believe to be unreasonable.

XXXVII.

The evidence shows that for the first five months of 1897 the operating expenses, such items as were last year charged to profit and loss account, amounted to $167,800.36, which would indicate an expenditure for the year of $402,720.84. That contracts have been made for the following improvements:

Vitrified brick paving in pens and alleys heretofore floored with plank	$75,000
For reconstructing tunnels	17,000
For building new steel viaduct and connections over U. P. and M. P. railway tracks	19,000
	$111,000

The evidence does not show what the income was during that period, but by taking the average ratio of operating expenses to income, which is 36%, we would have as the gross income for 1897, $1,118,668.89; gross expenditures (based upon said five months) $513,720.84, showing an increase in net income over last year's business of $106,397.67. As no evidence of the sources from which this increased income would be derived is forthcoming, no satisfactory finding can be made to exhibit the financial operations of the company for 1897, based on the first five months of the year.

XXXVIII.

The cost of hay and grain consumed by cattle, calves and hogs and sheep was $74,258.34. The company received therefor, $224,690.88, or a profit of 202.58%.

The cost of hay and grain consumed in the horse and mule department was $29,839.85, represented by the *per capita* charges mentioned in finding No. 24. The company received for such hay and grain, $57,225.44, or a profit of 91.78%.

The cost of the hay and grain consumed in the Gould barn was $6,104.27, represented by the gross earnings of the barn; the company received for such hay and grain $16,280.83, or a profit of 166.71%. It will thus be seen that all the hay and grain consumed cost $110,202.46, and was sold for $298,197.15, which produced a profit of $187,994.69, or an average of 170.59%.

XXXIX.

The other stock yards heretofore enumerated are operated generally in the same manner as those at Kansas City, and there is and was for a long time prior to March 12, 1897, active and
349 growing competition among their owners to attract and secure to each the shipment of live stock from competitive territories. Kansas City is the greatest stocker and feeder market in the world, and while Chicago exceeds it as a general market, yet, because of the expense of transportation from Kansas City there, and the loss in weight by shrinkage during such transportation, the live stock shipped to and sold at Kansas City in 1896 realized for its owners more than $1,500,000 in excess of the amount which would have been realized if forwarded from Kansas City to, and sold on the Chicago market.

XL.

For the services rendered by the officers, employés and servants of the Kansas City Stock Yards Company, considering their skill, ability, energy and fitness for the performance of such services, the compensation paid to them by the company is and has been fair and reasonable; and with the exceptions hereinafter noted, during its existence, the affairs of said company have, from the standpoint of the stockholders therein, been wisely, efficiently and economically administered, and its operating expenses and cost of maintenance have been necessary to properly transact its business and successfully carry out the purposes for which it was incorporated. However, the evidence shows that the real estate designated on Exhibit Z as "*e*," which was purchased in 1893–'4 for the purpose of extending the yards is not required for such purposes, and that its present value is less than its cost; nor is it clear that the large expenditures of money for lands and improvements in the horse and mule department were wisely made, nor that the successful operation of stock yards at Kansas City necessarily required that such ample provision should be made for the care and handling of horses and mules, especially in view of the fact that while these are

the only stock yards in the vicinity of Kansas City where cattle, calves, hogs and sheep are received for sale (the nearest yards being at St. Joseph, in Missouri), there are several firms at Kansas City engaged in buying and selling horses and mules, and who handle annually large numbers of such animals. It might also be proper in this connection to call attention to the further fact that while the present daily capacity of the stock yards is 22,000 cattle, 30,000 hogs, 15,000 sheep, and 4,000 horses and mules, the largest number ever received in one day was as follows: Cattle, 17,030; calves, 1,747; hogs, 26,408; sheep, 12,114, and horses and mules, 797.
350 In other words, while ample provision has been made for the care and handling of about 17% more cattle and calves, 13% more hogs, and 23% more sheep than have ever been received at the yards in one day, large sums of money have been expended in the purchase of high-priced land, and the erection of costly and valuable structures for the care and handling of 400% more horses and mules than were ever received at the yards in one day. It may be that time will prove that these expenditures have been wisely made, but it does not appear to be either just or equitable that the shippers of other classes of live stock should be called upon to assist in demonstrating such fact.

XLI.

In addition to the property belonging to the defendant company and used by it in the operation of its yards, it owned on December 31, 1896, the value of which was produced either from the business or from the proceeds of the sales of stock for cash:

Real Estate.

(*a.*) The two small tracts described in finding No. 7, located at the southern extremity of subdivision B, containing 1.302 acres. Their cost in 1871 was about $1,600. The present value is about $16,000 per acre, or $20,832.

(*b.*) A tract of land shown on said exhibit, cut by James street, containing 1.557 acres, being the remnant of a purchase made in 1876, the balance of the land purchased at that time being a part of the north yards. The cost of this 1.557 acres was $2,817, and its present value is $23,000 per acre, or $35,811.

(*c.*) 142.831 acres lying near Argentine, which was purchased from 1881 to 1884, with a view to the removal of the yards to that point, but which purpose was subsequently abandoned. This land cost $87,957.60 and is worth $3,000 per acre, or $428,493.

(*d.*) 8.028 acres on the west side of the Kansas river and opposite the main yards in Kansas, appearing on Exhibit Z as D. It was purchased in 1892 at $4,000 per acre, and is now worth about $5,000 per acre, or $41,140.

(*e.*) 12.122 acres bounded on the north by Central avenue, on the east by Water street and the north yards, on the south by the M. P. yards, and on the west by the Kansas river. This is a part of the

tract marked on Exhibit Z as E. Its cost was $39,058.55, all of which, except $810.53, was paid by the company in 1884–'5. Its present value is about $85,000.

(*f*.) The three fractional lots in block 2, Depot addition, mentioned in finding No. 14, which cost $7,000 and are now worth that sum.

(*g*.) The seven small tracts north of the north yards containing 2.716 acres, and designated on Exhibit Z as "*e*." The company paid for these lands $104,536.40 in 1894, and the cost of perfecting title, etc., amounted to $7,267.15, making their total cost $111,803.55. They are now worth about $65,000.

351 *Personal Property.*

Stock in the Interstate national bank, worth	$46,200
Stock in Schwarschild & Sulzberger Packing Company	3,600
Railroad live-stock cars	8,000
Cash and credits, about	400,000

or a total valuation of all such real and personal property of about $1,200,000. Equaling 22.27% of the present value of all the property, and 16.28% of the capital stock outstanding.

XLII.

The act of the legislature of the State of Kansas passed first the house of representatives and then the senate, entitled "An act defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating all charges thereof, and removing restrictions in the trade of dead animals, and providing penalties for violations of this act," and was signed and authenticated by the proper officers of those bodies, and approved by the governor March 3, 1897, as now printed in the statute book. Prior to the introduction of the bill in the house, another house bill had been introduced, which was numbered 87 and entitled "An act to regulate stock yards, and providing punishment for the violation thereof." That bill was referred to the committee on live stock, which reported a substitute therefor, which new bill was known and designated as "substitute for house bill No. 87." It is conclusively shown by the original documents in the office of the secretary of state and by the oral testimony of members of the legislature, if such documentary and oral evidence is competent to prove such fact, that the substituted bill, as introduced in the house by the committee on live stock, had the same title as the act that appears in the Session Laws of 1897 as chapter 240, except that the concluding word of the title to the bill so reported by the committee was "thereof," which does not appear in the published act, but the words "of this act" do appear; that prior to the action of the house thereon the bill was printed by the State printer, and copies thereof were distributed among the representatives and senators, the title thereto being identical with that of the substituted bill as reported; that in committee of the whole house the title was

mended by striking out the final word "thereof" and substituting n its place the words "of this act," and that the bill so amended vas passed and went to the senate for its action; that no change vas made in the title by the senate, and that the bill passed both ouses with the title just as it appears in the statute book as said hapter 240, Session Laws of 1897.

52 XLIII.

In approaching the question of the value of the real estate owned nd used by the defendant company for stock-yards purposes, I do o with a full sense of the natural and inherent difficulties of the roblem, augmented manyfold in this instance by the confusion nd well-nigh hopeless conflict between the evidence of opposing vitnesses of apparently equal intelligence, fairness and means of nformation. So far as it has been possible, I have given credit and ffect to all the testimony offered by the parties, and the figures which ollow are believed to express, as accurately as it is possible to ascer- ain and state it, the value, separately and collectively, of the vari- us tracts of land which make up the principal element of the com- any's plant. The evidence on this subject was all adduced on the ypothesis that the land was divested of all improvements, but pon consideration of all adventitious advantages accruing to it rom its location and environment, and upon this basis my esti- nates of the value of such real estate are made, and are as follows:

lain yards in Missouri,	41.708 acres, at $45,000.....	$1,876,860
lain yards in Kansas,	40.659 acres, at $30,000.....	1,219,770
uarantine yards,	13.458 acres, at $12,000.....	161,496
orth yards,	14.900 acres, at $23,000.....	342,500
Total	.....	$3,600,626

44.

The structures, buildings and all other improvements upon the al estate mentioned in the preceding finding, and upon the lands sed by the company and operated in connection therewith, were orth at the time the testimony was taken, about $1,480,000.

XLV.

The personal property on hand December 31, 1896, consisting of y and grain, horses, carts, wagons, tools, office furniture, lumber, ving brick, and other supplies was about $307,377.25.

XLVI.

If the personal property mentioned in finding No. 45 should cessarily be considered in estimating the value of the plant used stock-yards purposes, the total value of all property owned and ed by the company, as shown in findings Nos. 43, 44 and 45, is ,388,003.25.

XLVII.

It is impossible under the evidence to correctly value the good will or "live business" of the stock yards company, based upon the cost of reproduction. The estimates of the witnesses testifying in this behalf were largely conjectural. Much that had been expended by the company in establishing the business, had added materially to the value of the real estate, and influenced in
353 some degree the estimates placed thereon by the witnesses. This is peculiarly so with reference to the expenditures made in the way of donations and otherwise, to induce the location of packing-houses, railroads, and other interests in the vicinity of the yards.

XLVIII.

The evidence with reference to the market value of the shares of the capital stock of the company, and the effect thereon of an offer to sell any considerable number of shares, is far from satisfactory or convincing. There has never been much of it offered for sale on the market. A few sales have been made by the company at a premium, but most of the stock has been sold by it at par. There have been frequent market quotations in Kansas City and Boston during the past fifteen years, which have ranged from $110 to $141 per share, but the last quotation of which there is any evidence was in January, 1897, of $132. The contemplated action of the legislature in attempting to prescribe rates and charges which the company would be permitted to make for services performed and feed sold in the yards, probably caused the stock, which represents in part the good will or business of the company, to depreciate in value. The last sale of which there is any evidence was made in February, 1897, while the legislature was in session, at $115 per share. If the value depreciated $17 in January, it would probably be fair to presume a further depreciation prior to the final passage of the act of the legislature, until it reached its par value. This estimate would, after deducting the value of the tangible property of all kinds, show that the good will or business of the company, with its contracts and arrangements with railroad companies, packing-houses, etc., to be about $780,000, but as the value of the good will or business of the company depends upon the amount of its net income, if the State may prescribe reasonable rates and charges for the services performed by it, for the use of its property, and the prices which it shall be allowed to charge and receive for property sold by it—the reasonableness of such rates, charges and prices to be considered and determined with reference to the public as well as to the company—then any reliable estimates as to the value of the good will or business must necessarily be withheld until these other questions are determined.

Another method of arriving at the same result would be to capitalize the net earnings at the legal rate of interest, deducting from such capitalization the value of the tangible property, but the same considerations would control in determining the value of the good will as in the other case.

354 The following table exhibits in brief and graphic form the history, character, and amount of the capital stock of the company since its organization, together with the percentage of profits declared and paid to its stockholders in cash, in stock based upon earnings and stock based upon increased value of real estate:

Year.	Capital stock paid for in cash.	Cash dividends paid to stockholders and real-estate dividends declared and paid.	Rate per cent. of profit.	Stock dividends declared from earnings.	Stock dividends based upon increased value of lands.	Total capital stock.	Total dividends declared.	Rate per cent. of profit.
1871	$96,000					$96,000		
1872	96,000	$13,890	$14.47			96,000	$13,890	$14.47
1874	96,000	33,600	35.00			96,000	33,600	35.00
1875	96,000	16,800	17.50	$96,000		96,000	112,800	117.50
1876	169,000	9,600	5.68	66,300		192,000	75,900	39 53
1877	169,000	26,504	15 68	331,360		331,360	357,864	108.00
1878	211,400	28,000	13.24	235,000		662,600	263,000	39.69
1879	211,400	21,150	10.00		$40,000	980,000	61,150	6.24
1880	211,400					980,000		
1881	226,400	98,720	43.61			980,000	98,720	10.07
1882	226,400	99,480	43.89			995,000	99,480	10.
1883	226,400	321,295	142.30			995,000	321,295	32.39
1884	226,400	119,391	52.73		995,000	1,990,000	1,114,391	55.99
1885	226,400	149,250	65.92			1,990,000	149,250	7.50
1886	226,400	119,400	52 73			1,990,000	119,400	6.
1887	761,400	150,600	19 77	456,933		1,990,000	607,533	30.53
1888	761,400	282,800	37 14		1,058,067	4,040,000	1,340,867	33.19
1889	761,400	323,200	42 44			4,040,000	323,200	8.
1890	762,300	323,200	42 39	404,000		4,040,000	727,200	18.
1891	762,300	311,143	40 81			4,444,900	311,143	7.
1892	762,300	370, 92	48.61			4,444,900	370,592	8.33
1893	817,400	296,694	36.29		500,000	4,944,900	796,694	16.11
1894	2,484, 00	451,133	18 15	268,100		5,000,000	719,233	14.39
1895	2,484,500	554,816	22.33			6,935,200	554,816	8
1896	2,484,500	429,160	17.27	433,450		6,935,200	862,610	12.41
		Feb. 1, '97				7,368,650	110,558	15%
1897	2,484,500	110,558	4.45	78,090	Bl. c. sur.	Feb. 1, '97	78,090	2.56
Total	$2,484,500	$4,660,976		$2,369,173	$2,593,067	$7,368,650	$9,623,216	

355 The following table exhibits in condensed form total receipts of disbursements in the operation of the stock yards proper and the net income for 1896, the original cost of stock yards property, the present value of the real estate, improvements, and personal property used exclusively for stock-yards purposes and rate per cent. of profit, together with the application of statutory rates thereon:

On business of 1896:

A. If only the real estate and improvements used exclusively for stock-yards purposes is concerned: Total receipts from operation of stock yards only, $1,012,271.22; total disbursements from operation of stock yards only, $365,712.49; net income, $646,558.73; original cost of stock-yards property, $3,852,361.81; rate % of profit, 5.86; present value of real estate, improvements, and personal property of stock yards, $5,388,003.25; rate % of profit, 11.99; earnings, capitalized at 6 %, $10,775,979.

B. Applying statutory rates to "A:" Total receipts, operation of stock yards only, $711,619.45; total disbursements, operation of

stock yards only, $365,712.49; net income, $345,906.96; original cost of stock-yards property, $3,852,361.81; rate % of profit, 8.98; present value of real estate, improvements, and personal property of stock yards, $5,388,003.25; rate % of profit, 6.42; earnings, capitalized at 6 %, $5,765,116.

C. If construction item of $169,584.65 is properly chargeable to operating expenses as shown in "A:" Total receipts, operation of stock yards only, $1,012,271.23; total disbursements, operation of stock yards only, $535,297.14; net income, $476,974.08; original cost of stock-yards property, $3,852,361.81; rate % of profit, 12.38; present value of real estate, improvements, and personal property of stock yards, $5,388,003.25; rate % of profit, 8.85; earnings, capitalized at 6 %, $7,949,568.

D. Applying statutory rates to "C:" Total receipts, operation of stock yards only, $711,619.45; total disbursements, operation of stock yards only, $535,297.14; net income, $176,322.31; original cost of stock-yards property, $3,852,361.81; rate % of profit, 4.55; present value of real estate, improvements, and personal property of stock yards, $5,388,003.25; rate % of profit, 3.27; earnings, capitalized at 6 %, $2,938,705.

356–421 The following table shows the receipts and disbursements of the company for the year 1896 as found in the profit and loss account, the net income and total capital stock as they appear in the company's books, together with the present value of all property, rate per cent. of profit, and application of statutory rates thereon:

On business of 1896:

"E," as shown by profit and loss account: Total receipts $1,023,870.20; total disbursements, $368,059.05; net income $655,811.15; total capital stock, $7,368,650; rate % of profit, 8.9; present value of all property, $6,588,003.25; rate % of profit, 9.9; earnings, capitalized at 6 %, $10,930,186.

F. Applying statutory rates to "E:" Total receipts, $723,218.50; total disbursements, $368,059.05; net income, $355,159.45; total capital stock, $7,368,650; rate % of profit, 4.8; present value of all property, $6,588,003.25; rate % of profit, 5.4; earnings, capitalized at 6 %, $5,919,324.

All of which is respectfully submitted.

GEO. W. CLARK.

Endorsed: No. 7427 & 7453. Cotting *vs.* K. C. Stock Yards Co. & Higginson *vs.* Same. Master's report. Filed Aug. 24, 1897. Geo. F. Sharitt, clerk.

422 EXHIBIT E E.

Kansas City Stock Yards Co.

Statement of Purchases of Hay and Grain for 1896.

			Amount.
27,801.024 lbs. hay	at	$7.23 per ton	$100,560.75
67,998.50 bu. corn	"	.22 per bu	14,972.67
55,204.12 bu. oats	"	.19 " "	10,448.73
568,970 lbs. bran	"	.39 per cwt	2,210.64
			$128,192.79

Kansas City, July 1st, 1897.

—— ——, *Treasurer.*

This exhibit does not purport to show amount of feed sold.

L. C. BOYLE, *Defendant.*

2, 7, '97.

ALBERT H. HORTON,
D. R. HITE, — *Complainants.*
PRATT, DANA & BLACK,
For the Other Defendants, Including Ks. Cy. Stk. Yds. Co.

(Endorsed:) E E. No. 7427, 7453. Kansas City Stock Yards Co. Statement of purchases of hay and grain for 1897. Filed Aug. 24th, 1897. Geo. F. Sharitt, clerk.

423 Ex. S S. C. H. N.

There was actually expended by the Kansas City Stock Yards Company during the first five months of the year 1897 for the following purposes the sum of		$217,324.08
For operating expenses, including labor, cleaning yards, office expenses, insurance, taxes, lost & damaged stock, and similar items		$151,102.24
For cost of maintenance, including the following items:		
Two toilet-rooms in Exchange bldg	$1,270.40	
One dynamo for power plant	552.80	
Changes in horse stable (Gould's)	42.53	
One office for commission merchant in large horse barn	250.27	
Construction of two mule barns # 3	19,723.51	
Painting one hay barn	41.03	
Addition to horse shed to increase its capacity	248.72	
Subdividing and changing pens in quarantine yards	1,025.33	

Drainage for mule barns # 3, above referred to	462.62	
Office furniture	6.50	
Horses purchased for company's use	171.00	
Paving around mule barns # 3, above referred to	1,698.66	
Same	453.65	
Labor on switch (railroad tracks)	25.00	
Viaduct, quarantine yards	3,012.54	
Two approaches to viaducts in main y'ds	1,053.19	
Wagons and carts bought for Co.'s use	165.00	
Water supply for mule barns # 3	149.32	
Riprapping river bank, main yards, to protect it from encroachments by river	869.77	
Also $35,000, being the amount paid to said company for land deeded to the Schwarzchild & Sulzberger Company in consideration of the immediate expenditure by said packing establishment of the sum of at least $100,000 in the enlargement of its plant sufficiently to consume about two thousand head of cattle more per week than it had theretofore consumed	35,000.00	
		66,221.84
Aggregate		$217,324.08

L. C. BOYLE, *Defendant.*
D. R. HITE,
Solicitor for Complainants.

(Endorsed:) Ex. S S. C. H. N. No. 7427, 7453. Filed Aug. 24th, 1897. Geo. F. Sharitt, clerk.

424 EXHIBIT F F.

For the purpose of removing any question which may exist in regard to the manner in which the earnings of the stock yards company were disbursed during the years 1892, 1893, 1894, 1895, and 1896 for operation, maintenance, and extensions of improvements, it is agreed as follows:

1892:

The gross earnings were $761,733.40.

From this amount there was expended, in addition to the $296,377.03 shown by the "profit & loss account" for that year, the following amount		$85,076.58

This amount was disbursed for the following purposes:

For an addition to the Exchange bldg. (in Kansas)	$45,608.25	
For horse stable (in Missouri)	79.68	

For scale-houses and scales	7.50	
For sundry small buildings, new, such as gate offices, telephone buildings, etc	2,589.12	
For chutes and fences (extensions and subdivisions of pens)	219.19	
For drainage, extension	405.22	
For office furniture, new	151.29	
For flooring cattle pens and alleys (flooring with plank existing cattle pens never floored before)	3,919.83	
Animals purchased for Co.'s use	933.10	
For new bracing to strengthen Kaw River bridge	2,998.87	
Railroad tracks, extension	313.65	
Double-deck hog sheds built new to take the place of single-deck sheds which 425 were worn out; total cost, about $40,000, the difference being included in "expense account"	26,448.77	
For extension of viaduct	154.68	
For wagons and carts for Co.'s use	495.00	
Water supply, extension	752.43	
		$85,076.58
Est'd value of material formerly charged to H. & M. stables ac. and credited to that account in 1892		2,061.48
		$83,015.10

1893:

The gross earnings were $840,733.25.

From this amount there was expended, in addition to the $298,915.55 shown by the "profit & loss account" for that year, the following amount		$87,149.70

This amount was disbursed for the following purposes:

Completion of addition to the Exchange bldg. (in Kansas)	$385.95	
Fire-engine house	7,609.97	
(Of this amount there was expended for the building $5,148.86 and for fire appliances in connection therewith $2,164.11, all new construction and appliances.)		
Construction of two-story-brick horse and mule barn	72,574.42	
(This barn was erected of increased size to take the place of and furnish greater capacity than a frame barn which had become worn out and dilapidated and which cost originally about $25,000. The brick barn		

was erected on a different portion of the stock yards Co.'s land which had been purchased for that purpose. The ground formerly occupied by the frame barn was afterwards devoted to cattle pens and is now being so used.)			
Some buildings in connection with the horse & mule stable.....	465.15		
(New construction and repairs.)			
426 Some buildings in connection with hay and grain barns.....	81.71		
(New and not repairs.)			
Some construction about scale-houses and scale.....	16.25		
(New construction.)			
Chutes and fences.....	3,054.93		
(This was for the construction of fences around cattle pens established at a place from which hog pens had been torn down and removed.)			
Office furniture.....	43.85		
(New —.)			
Flooring cattle pens and alleys.....	198.63		
(New construction.)			
Brick paving to take the place of planking in alley and hog pens.....	2,718.84		
			$87,14
This account is credited this year with the following items:			
Estimated value of material formerly charged to "sundry small buildings account".....	7,406.01		
Received from sale of horses used in company's service.....	1,271.95		
Estimated value of material formerly charged to "hog-sheds account".....	5,030.11		
Sale of wagons and carts there-fore used in company's service.....	249.36		
			13,9
Balance.....			$73,1

1894:

The gross earnings were $976,825.62.

From this amount there was expended, in addition to the $349,943.33 shown by the "profit & loss account" for that year, the following amount..... $252,751.87

This amount was disbursed for the following purposes:

For an extension of the Exchange building in Kansas, being an extension of the hallway or lobby.....	$11,131.40	
Some appliances in connection with the fire-engine house.....	54.50	
Some work about horse-stable bldg.....	1.00	
(New construction.)		
Building in connection with horse & mule dep't.....	989.24	
(Being the finishing up of the large stable construction of which was begun in 1893. Original construction.)		
For new mule stable on Genessee St. bet. 16th & 17th Sts.....	17,909.59	
Amount forward.....		$252,751.87
For building Sparks' barn and purchase of an "L" attached to the original building belonging to Sparks.....	3,121.66	
(This amount does not show the total actual cost of the construction, but only the betterments of the building above former construction, the total cost of the structure at the close of 1894 being about $11,000.)		
For buildings between 16th and 17th streets and Bell and Genesee Sts. on newly purchased land.....	46,640.00	
(This includes all the buildings on that ground at the time the said block of land was purchased, not including the Gould barn, which had been on the ground for some time. This amount was the estimated value placed upon these buildings at the time of the purchase; they were not purchased for stock-yard purposes, and but few of them remain on the ground, the five that do being rented by the company for various purposes.)		

For the Transit house....	30,000.00	
(This includes the estimated value placed upon the building when the land on which it was situated was purchased, and the actual cost of two stories and other additional improvements added to it during that year. This house is leased by the stock yards Co. for a hotel.)		
For hay and grain barns.....	608.99	
(New construction.)		
Chutes and fences.....	50,714.39	
(These were the chutes and fences constructed in the shipping division at the south end of the main yards, partly on land long owned by the Co. and partly on the purchase made in 1893 and 1894, a portion of which land had been formerly occupied by the horse and mule business.)		
For drainage.....	3,865.54	
(This was for drainage of the shipping division described in the last preceding item and the new horse and mule barns, and is original new work.)		
428 Amount forward.....		$252,751.87
Office furniture, new.....	54.00	
Horses for company's use.....	397.50	
Brick paving.....	45,461.08	
(Of this amount there was expended for paving in pens and alleys in place of plank worn out $31,680.58; for paving cattle pens in new purchase just constructed and never paved before, $13,780.50.)		
For railroad tracks.....	4,531.92	
(This amount was expended for tracks in the shipping division above referred to, the same being new construction, that ground not having been used for shipping purposes before.)		
For hog sheds.....	419.13	
(New work, but probably for subdividing existing pens.)		

Tunnels....	958.02	
(Extension of tunnel No. 1 to move further orth the mouth of the tunnel to accommo-ate a track put in by the Missouri Pacific Railway Company. This tunnel is con-tructed under the yards of the Union Pa-ific and Missouri Pacific Railway Com-any's under permission from them to main-ain the same so as not to interfere with heir use of ground.)		
Viaduct.....	24,444.43	
(This was for the original construction of he viaducts over main yards.)		
Wagons and carts for company's use.....	490.00	
Water supply	10,959.48	
(For supplying water to the new pens in he shipping division and to bring new ten-nch main through the entire length of the		
129 Amount forward.....		$252,751.87
yards from the connection with the Kansas City, Kansas, water mains. This ten-inch main took the place of the mains formerly existing, which had become inadequate. The water supply in the shipping division was new and original construction, there having been no pipes there before, the esti-mated cost of this shipping division account being $3,000, and the balance being expended for the said water main.)		
		252,751.87

This account is credited this year with the following items:

Estimated value of material credited to ac. "scale-houses and scales".....	$1,161.69	
Est. value of material credited to ac. "sundry small buildings"..... ...	2,119.14	
Est. value of material credited to ac. "flooring cattle pens & alleys"....	6,686.15	
		9,966.98
Balance.....		$242,784.89

1895:

The gross earnings were $971,430.46.

From this amount there was expended, in addition to the $360,523.46 shown by the "profit & loss account" for 1895, the following amount	$178,584.40

This amount was disbursed for the following purposes:

For addition to the Exchange building (in Missouri)	$58,973.08
For power plant (in Kansas)	36,843.89

(This plant furnishes power for electric lighting, for elevators, and if needed in case of fire, for throwing water, and also to heat the Exchange building. This was new and original construction: it took the place of the heating apparatus in the Exchange building, which cost about $4,000, and had become worn out, and furnishes electric light for the stock yards, which had been formerly obtained from an electric light company in Kansas City, at an expense of about $4,800 per year; it also furnishes power for running three passenger

430	Amount br't forward	$178,584.40

elevators in the Exchange bldg., in place of running them by water from the city water works.)

For fire-engine house, new appliance	33.64
Horse stable, improvements by way of stalls and partitions	29.84
Horse & mule dept.; same	38.60
Mule stable; same	17.91
Water-closet, improvement	4.00
Scale-houses and scales	570.15

(For beginning the construction of two new scale-houses and new scales in the extension of the new Missouri yards, finished in 1896.)

Sundry small buildings	22.98
Chutes and fences	24,877.00

(Of this amount, $1,500 went for new chutes for the Suburban Belt R'y, which had just entered the yards, and had no chutes there before; $3,750 was for chutes on Missouri Pacific track, taking the place of others that had been torn down, partly because worn out and partly to make better arrangements; $1,848 was for new chutes for Suburban Belt at the quarantine yards, into which that company then built for the first time, the balance, about $17,000, being for fencing in the new extension of the new Missouri yards.)

Drainage	3,205.69

(In new yards in new Mo. extension.)

Brick paving	47,814.84	
(Of this amount, there was expended for paving in pens and alleys, in place of plank worn out, $18,892.72; for paving cattle pens in new purchase just constructed and never paved before, $28,922.12.)		
Railroad tracks	11.05	
Wagons and carts for company's use	155.00	
131 Amount forward		$178,584.40
Water supply	5,986.73	
(For pipes and hydrants to supply water in new Missouri extension.)		
		178,584.40
This account is credited this year with the following items:		
Received from sales of buildings located bet. 16th and 17th Sts. and Bell and Genesee Sts.	$33,840.00	
(See same item in preceding year.)		
Estimated value of material credited to "flooring cattle pens & alleys" ac.	8,000.00	
Received from sales of horses	72 50	
Estimated value of material credited to "hog-sheds" ac.	19,986.67	
		61,899.17
Balance		$116,685.23
1896:		
The gross earnings were $1,023,870.20.		
From this amount there was expended, in addition to the $368,059.05 shown by the "profit & loss account" for that year, the following amount		$176,394.60
This amount was disbursed for the following purposes:		
For completion of the new Missouri addition to the Exchange building, begun in 1895	$24,854.35	
(This includes $386.08 for a new vault in the Kansas part of the building.)		
For completing power plant, begun in 1895	5,950.56	
(See that item in that year's acc't.)		
On horse stable	220.77	
(Expense of construction wash-room to take the place of former one, including material and labor.)		

On horse stable, H. & M. dep't..... 33.92

(Labor and painting.)

On mule stable, H. & M. dep't..... 831.12

(Constructing office rooms in the building.)

432 Amount forward..... ..... 176,394.60

On horse & mule stable..... 1,541.18

(Taking out old front of Sparks' barn and rebuilding it about 25 ft. further front on street line, making the building larger.)

For Transit house..... 56.13

(Making additional windows.)

On hay and grain barns..... ..... 4,276.95

(For moving one barn, enlarging it, and fitting it up, $600, and the rest for the erection of three new barns where there had been none before.)

On scale-houses and scales..... ... 6,228.77

(For completing two scale-house and scales in Missouri extension and building two scales and scale-houses in the hog division on the north side and one in the sheep division on the north side—all new and original construction except the one in the sheep division on the north side, which took the place of a house which had become unfit for use.)

Sundry small buildings.... ..... 1,163.91

(Of this amount about $700 was expended in rebuilding a worn-out train office which originally cost about $300, and which was inadequate for the business. The balance is for putting up new buildings, including a train office in the north yards, where there had been none before.)

Chutes and fences..... 24,892.56

(Fences in new yards in new Missouri extension.)

Drainage..... 2,416.09

(Construction of and laying new drainage pipes in the north yards, taking the place of former drainage system there, the new ones being required in consequence of the different arrangements of the new water supply.)

Office furniture, new..... ..... 1,052.44

Brick pacing..... ..... 75,169.87

(Of this amount $44,492.07 was expended for paving to take the place of paving in alleys, plank flooring

433 & 434 Amount forward		176,394.60

worn out, and the rest, $30,677.80, was expended for paving the pens in the new Missouri extension.)

Railroad tracks, lifting jack	7.42	
Hog sheds	4,420.65	

(Portion of a large amount expended for rebuilding hog sheds, which portion was estimated as a betterment over original cost of the former sheds, the new sheds covering an additional area equal to the capacity of eleven cars of stock.)

Sheep sheds	12,541.71	

(New sheep sheds built in the north yards on the site of former cattle pens.)

Viaducts	6,809.80	

(Expended for an extension in the main yards of viaducts built in 1894.)

Water supply	3,926.40	

(For pipes, hydrants, etc., to carry water to pens and new hog and sheep sheds in the north yards, necessitated in place of former water pipes, etc., by rearrangement of the sheds.)

		176,394.60

This account is credited this year with the following items:

Estimated value of material credited to "flooring cattle pens — alleys," being old material taken therefrom	6,489.43	
Horses belonging to company sold	294.00	
Wagons and carts sold	26.52	
		6,809.95
Balance		$169,584.65

L. C. BOYLE, *Defendant.*
ALBERT H. HORTON,
D. R. HITE, — *Complainants.*
PRATT, DANA & BLACK,
For Other Defendants, Including K. C'y Stk. Yds. Co.

435 In the Circuit Court of the United States in and for the District of Kansas, First Division.

R. U. COTTING, Complainant, *v.* THE KANSAS CITY STOCK YARDS Company and Others, Defendants.	No. 7427.	In Equity. Causes Consolidated.
FRANCIS LEE HIGGINSON, Complainant, *v.* THE KANSAS CITY STOCK YARDS Company and Others, Defendants.	No. 7453.	

Evidence Taken before George W. Clark, Special Master in Chancery.

The master, after due notice and agreement of the parties, sat at the Midland hotel, in Kansas City, Missouri, on Friday morning, April 30th, 1897, to hear such evidence as the parties might present.

The complainants appeared by A. H. Horton and D. R. Hite, their solicitors.

The defendant L. C. Boyle, attorney general of Kansas, appeared in person and by E. C. Little, his solicitor.

The defendant The Kansas City Stock Yards Company appeared by I. P. Dana, its solicitor.

Thereupon the complainants, to maintain the issues upon their part, produced evidence as follows, to wit:

HARRY P. CHILD, a witness produced by the complainants, being first duly sworn by the master to testify the truth, the whole
436 truth, and nothing but the truth, in answer to direct interrogatories propounded to him by A. H. Horton, solicitor for complainants, *d*estified as follows, to wit:

Q. State your name, age, and residence.

A. Harry P. Child; age, 48 years old; residence, Kansas City, Missouri.

Q. What official position do you now occupy in the Kansas City Stock Yards Company?

A. Assistant general manager.

Q. How long have you been in any way connected with the company, or the company of which it is the successor?

A. Almost twenty-six years—since June 1st, 1871.

Q. You may state the early commencement of the effort to have stock yards by this company, and the condition of matters at that time.

A. The Kansas City Stock Yards Company was organized in 1871. The yards were built during March, April, and May of that

year with the idea of making, primarily, a feeding business for cattle in transit; 1869 and 1870 had developed Abilene, Kansas, as the objective point of the big cattle drives from Texas; immense herds came that way, the owners at that time shipping for the eastern markets—came there for shipment, and with the idea of feeding in transit, these yards were conceived and built.

Q. Go on now and state in a general way the progress which has been made in these yards and in the business, etc.

A. At first, without any special thought of its being a market, representatives of Chicago commission-houses located here to influence business to their houses in Chicago. Those men, in the course of a few years, began to sell to speculators lots of cattle occasionally, and from those occasional sales has grown up the present market, which now, instead of two or three individuals representing foreign firms, represents about ninety commissiou firms,
437 and from an occasional lot of stock being sold, it has grown to where about ninety-five and one-half per cent. of the cattle, ninety-nine and one-half per cent. of the hogs, and about eighty per cent. of the sheep are sold on this market.

By Mr. BOYLE: That is, cattle that come here?

A. They come here to this market for sale here or in transit to eastern markets, but that many arrivals are sold at Kansas City—that proportion.

Q. When these yards were first organized and commenced operations, what was the condition of the grounds and the surroundings where they are now?

A. The grounds were, a portion of them, fields, and possibly two-thirds of them were original forest, covered with forest trees; had never been reclaimed. There was no business of a commercial nature, and in fact no city built in the bottoms at that time, just scattering houses. The ground was rough and uneven, and right through the center of what is now the main part of the yards was the bed of Turkey creek, which, in the improvement of the yards, required a fill of about fifteen feet deep and from sixty to one hundred feet wide clear through the length of the yards.

Q. What was the condition as to railroads here then?

A. We had the Hannibal & St. Joe railroad and the Kansas Pacific—the Union Pacific now. That is all we had to commence with. The Fort Scott came later, I think. I have no date here just when those roads did commence.

Q. How was it as to any packing-houses, where hogs or cattle were purchased for slaughter?

A. There were no packing-houses at the time the yards were opened. About two or three years after, the second year, possibly, after they opened, there was a little packing-house started by T. J. Bigger, who did a small business, and later Plankington, of Milwaukee, started a branch house here; but at that time there
438 were no hogs coming to market, and their business was entirely confined to hogs which they bought in the country themselves by travelling buyers and shipped in here direct to their

house. In later years the market gradually grew on hogs, until now all that come here are sold here, and none are bought outside.

Q. Have you got any memoranda or any way to refresh your recollection as to the number of stock received in 1896 at the yards?

A. In 1896 we received at the Kansas City stock yards 1,714,532 cattle, 100,166 calves, 2,605,575 hogs, 993,126 sheep, 57,847 horses and mules; in all, 113,594 cars of stock.

Q. What is the total number of head of all kinds?

A. The total number of head of cattle, calves, hogs, sheep, and horses and mules was 5,471,246.

Q. State, if you can recollect, about how much space or ground was occupied by the yard, in general terms.

A. My judgment, as I remember the yards, was the first yards we commenced business with, of the new construction, represented probably ten or twelve acres. In addition to that, we had four pens, of possibly two acres, that had been there before and used by the Hannibal & St. Joe railroad and the Kansas Pacific as transfer pens.

Q. In the progress of the business, how extensive are the grounds at this time?

A. All the grounds owned at that time were some forty acres.

By Mr. BOYLE: What time are you speaking of?

A. 1871.

By Mr. BOYLE: When was it that they owned ten or twelve acres?

A. That was in 1871; that was the ground that was built over at that time. All the land they had at that time was not built over. Land has been acquired in different directions by purchase and by very extensive filling and encroachment upon the river frontage, until now there are about 168 acres owned and leased by the
439 company.

By the MASTER: What was the number of acres you had originally?

A. About forty acres. I think it might have been a little less than that.

By Mr. BOYLE:

Q. Now, it is 168 acres owned and leased?

A. Yes, sir.

Q. What was the general character of the improvements at those times you speak about, just the general character in 1871? You need not go into details about it.

A. It was not as substantial a class of improvements as now, because at that time it was not built with the idea of permanence that it has since attained as a market, and the construction was as simple as could be used to safely conduct the business, but since that time our construction has gradually changed until all of our improvements are of the very best and most permanent of their kinds.

Q. State generally how the packing-houses have increased. I mean as to numbers and business since that time, since 1871.

Mr. Boyle objects to the question as incompetent, irrelevant, and immaterial. The master overruled the objection.

A. The packing-houses have grown from the small plant of Bigger & Company, which killed probably 100 or 150 hogs a day, and was exclusively a hog-house, up to the present, when we have the Armour Packing Company, which has the largest house here in the world for beef, pork, and mutton; the Schwarzchild & Sulzberger Company, Swift & Company, each of them killing as much stock as the Armour Company; Jacob Dold Packing Company, and Fowler & Son, all combined are killing about 1,000,000 cattle a year (referring to a book). All combined during 1896——

Mr. Little objects to the witness testifying from a book
440 unless the book is offered in evidence.

Thereupon complainants offered in evidence the book used by the witness, which purports to be the "Twenty-sixth Annual Live Stock Report of the Kansas City Stock Yards Co. for the year ending December 31, 1896, and summary for years 1871–1896, by E. E. Richardson, secretary, Kansas City."

Said book was duly admitted in evidence, marked "Ex. A., C. H. N.," and is returned with the evidence of said witness.

A. (Continuing:) All combined, they killed 894,537 cattle; 58,331 calves; 2,263,143 hogs, and 685,727 sheep.

Q. At the time the yards were started, what kind of ground was it where the yards are?

A. It was rough, wild land, low land down on the bank of the Kansas river; very much of it had to be raised by grading up above the ordinary high water, and the first year or two of the yard's existence we were troubled very much with mud on account of the muddy nature of the soil. In doing away with that, the company expended about sixty to seventy-five thousand dollars in paving the yards with stone under the idea that it would be better for the cattle on account of not being slippery, there being a great deal of complaint at the Chicago yards, which are paved with plank, on that account. The experience with the stone proved that it was a mistake, as the sharp points of the stone made the feet of the cattle sore, so they would not bear shipment, were inclined to get down in transit after leaving here. That was an objection to the yards, and all of that work had to be torn out and replaced with plank. To illustrate how bad the mud was: Before we commenced paving with rock we cleaned out one ten-acre pen and hauled out 1,124 wagon-loads of mud out of it, and put in 550 loads of sand to replace it, which made rather expensive maintainance of the yards without floor or pavement.

441 Q. How were the yards situated in relation to Kansas City, Missouri, at that time?

A. At that time they were all on the Kansas side of the line between the two States.

By Mr. HITE: You refer now to 1871?

A. Yes, sir.

Q. Where was the occupied part—the business part of Kansas City, Missouri, at that time?

A. Practically, all of it up in this part of the city, or, rather, north of the junction.

Q. How far from the grounds, I mean.

A. Probably a mile.

Q. A mile which way?

A. East of the yards.

Q. How was it about Kansas City, Kansas?

A. Kansas City, Kansas, was at that time a small collection of houses, about half a mile north of the yards, this side of the Kansas river.

Q. What was it named then?

A. Kansas City, Kansas.

Q. What was it named then?

A. That was the name then, but on the other side of the river was the town of Wyandotte, and also of Armstrong, which have been consolidated since that time with the town of Armourdale, which has been entirely created since then, all four cities being joined into the present Kansas City, Kansas.

Q. How is that now in relation to the portion of the yards that are in or adjoining Kansas City, Kansas?

A. Practically a solid city right up against the yards on either side.

Q. How is it as to Kansas City, Missouri?

A. The same.

Q. What buildings and industries are there in and around the yards in Kansas City, Missouri?

A. There are hotels, residences, stores of various natures; in fact, about all the elements, except manufacturing interests, that go to make up a city.

Q. How is it as to railroads and switches anywhere around the yards?

A. Well, nearly all of the available ground of the two cities is taken up now by terminal facilities for the railroad systems.

442 Q. How close do they run up to the yards which are occupied by the company?

A. Two systems—the Union Pacific and the Missouri Pacific, with their switch yards—divide the yards—go right through them; the Rock Island is half a block from the yards, parallelling them on the east side.

Q. Do you know anything about the Belt railroad?

A. The Belt railway has its main tracks across the south end of the city, and has a connection into the yards; in fact, all the railroads have connections with the stock yards, either by their own rails or by switch or trackage rights.

Q. State whether there is any vacant or unoccupied lands surrounding these yards.

A. None at all, excepting an occasional lot that is not built on, but held for speculation.

Q. Where the stock yards are located, how does that compare with the business part of Kansas City?

A. Well, it is built up just as solid as the business part of the city.

Q. And as to the business carried on around it?

A. I do not catch the drift of the question exactly.

Q. Whether it is a busy part of the city or not?

A. Oh, yes; it is a common saying here that the only business rush there is here is down in the neighborhood of the stock yards.

Q. You have a map here of the location of the stock yards?

A. Yes, sir.

Q. What is this a map of?

A. Of Kansas City, Missouri, and Kansas City, Kansas—part of Kansas City, Kansas.

Q. Point out to the special master where the stock yards are.

A. Here is the present stock yards; right in there is the original yards, and they were extended down in this way. Here is the State line here. Here is the North Side yards—the Missouri Pacific yards, we call them. Over here and here are railroad systems, crossing over to the yards. Here is the Kansas river, and
443 here are the quarantine grounds over here.

Q. About how much land is in the quarantine grounds?

A. About 20 to 23 acres; somewhere thereabouts. Here is a strip here which has been acquired since by the purchase of business and residence property.

Q. State what color represents the present stock yards upon this map.

A. On this map it is colored in blue.

Q. What is this?

A. The Kansas river, dividing the yards.

Q. Show the master about where the State line is.

A. It comes right through here, through the yards.

Q. What are these red lines?

A. They are street tracks, I believe.

Q. How do they run—whether they run to the stock yards or not?

A. Yes; they come from the east and west.

Q. Within what length of time have these been constructed as they are now?

A. The tracks?

Q. Yes. I mean just generally.

A. About the last twelve or fourteen years.

Q. A good many later — that?

A. Yes; the bulk of them have been within ten years; within seven or eight years.

Q. How much property is there in this part on the Missouri side?

A. The main yards, you mean?

Q. Yes.

A. Probably forty-five to fifty acres.

Q. How much over there—the north yard?

A. I guess I had better not answer that without data.

Q. What kind of land exists over here?

A. Ordinary city property.
Q. How far south is the bottom before it runs into the bluff?
A. It runs down three-quarters of a mile south of the yards before it strikes this bluff that follows around the Kaw river here.
444 Q. South of the grounds, how far is that?
A. That is about three-quarters of a mile south of here.
Q. How is that bottom occupied?
A. It is all occupied with switching facilities, manufacturing plants that require trackage, railroad facilities, interspersed with houses here and there.

Complainants now offer in evidence the map of Kansas City, Missouri, and Kansas City, Kansas, identified by the witness.

Defendant L. C. Boyle objects to the admission of the same in evidence for the reason that it has not been properly identified or shown to be accurate.

By Judge HORTON: It is not offered as being drawn to an accurate scale, but as showing correctly the location of the yards with reference to the surrounding country.

Q. You may state whether it does that correctly.
A. To the best of my knowledge and belief it does.

Said map was admitted by the master and marked for identification "Ex. B, C. H. N.," and is herewith returned.

Q. What is this (showing the witness a blue print)?
A. A map of the Kansas City stock yards, showing the pens and buildings.
Q. What does this represent here?
A. This section here represents the sheep department.

Said map so identified by the witness here offered in evidence by the complainants. The same was duly admitted in evidence and marked for identification "Ex. C, C. H. N.," and is herewith returned.

Q. Now, what does Exhibit C represent, substantially?
A. The construction and grounds of the Kansas City Stock Yards Company. This is the sheep department for all the yards, marked O O.
445 Q. O O is what?
A. That is the Missouri Pacific hog division.
Q. When you speak of the Missouri Pacific hog division state what that means.
A. For the hogs received from the Missouri Pacific, the Chicago Great Western, Pittsburg & Gulf, Kansas City & Northwestern, and Osceola & Southern railroads.
Q. In what State is the division marked O O?
A. It is in the State of Kansas.
Q. From what States do those roads which you have just mentioned transport hogs and cattle to that division?
A. Iowa, Missouri, Arkansas, Indian Territory, Texas, Kansas, and Nebraska, and possibly scattering loads from still further off.

Q. After the hogs are shipped to that place what then becomes of them?

A. They are turned over to the commission men as representing the owners for sale.

Q. Are they slaughtered here or taken away?

A. According to the purchaser. We have buyers on the market for all slaughtering points in the United States and Europe. Of course, the European men are here for cattle, not hogs.

Q. What I want to know without going into details at this time is whether or not these animals are all purchased when in Kansas or whether they are purchased and shipped away—any part of them.

A. Just the same as in any other part of the yards. They are disposed of according to the buyer; they are slaughtered in Kansas or slaughtered in Missouri or shipped to points in any one of those States or any other State.

Q. On what part of the map are the quarantine grounds?

A. On the upper part, marked southern cattle.

Q. Where are the cattle brought from that are kept in those yards?

A. From south of a line established by the United States Government, called the United States quarantine line.

446 Q. About where is that line?

A. That line runs between the Indian Territory and Kansas and between Missouri and Arkansas in its immediate action with reference to our business.

Q. Then all cattle that are kept in the quarantine grounds come from below that line?

A. They come from below that line all but about two months of the year.

Q. What are these grounds here?

A. That is the Exchange building, the office building of the commission men and of the stock yards company.

Q. To whom does that belong?

A. It belongs to the stock yards company and is under its entire control.

Q. You said something about some property leased or rented by the stock yards company. State where upon this map any portion of that ground is located.

A. That ground is located over here on the quarantine side and is part of the quarantine yards—about eleven acres leased from the Union Pacific Railway Company on a long-time lease.

Q. State whether or not all the rest of the ground except that which you refer to as leased and as part of the quarantine grounds is occupied, possessed, and owned by the stock yards company.

A. All except two little strips in here next to this railroad yard.

Q. Of about how much?

A. Probably four or five acres altogether.

Q. Now, you say "in here." We want the record to show where it is.

A. Next to the railroad yards of the Union Pacific railway and

to operate our three passenger elevators in the building and as an auxiliary water supply in case of fire.

450 Q. What is the building?

A. It is a brick building, located immediately south of the Exchange building.

Q. Tell the master more about what the exchange is.

A. The Exchange building is practically a four-story office building. There is a lower story that is partially out of the ground, and you might almost call it a regular story, containing about 353 rooms, built of brick, and occupied by the Interstate national bank, the Kansas City Stock Yards Company, and offices of about ninety commission firms, representatives of all the railroads, and offices for quite a large number of buyers on the market.

Q. State whether or not that building is necessary in the proper operation of these yards.

A. It is absolutely necessary, as all of these men must have offices in order to do the business.

Q. Do you know of your own personal knowledge the cost of that building or any part thereof?

A. Only as each section was built. I knew at the time, but could not recollect the figures now.

Q. What buildings are there on the grounds outside of the Exchange building, the power plant, and the horse and mule barns which you have described?

A. There are fifteen scale-houses.

Q. What is a scale-house?

A. A scale-house is a house built over the scales used in weighing stock. These large platform scales have a capacity of between three and four car-loads of stock at a draft, and each scale is shedded in, with office room for the weighmasters and parties doing business at the scales. In addition to the scale-houses there is a large number of other buildings—feed offices, feed barns, and gate offices.

Q. All the buildings are named in this list?

A. Yes, sir.

Q. What is there about sewers there?

A. The entire yards are sewered to carry off all rainfall
451 and all overflow from the water troughs. Every pen is supplied with water supply and drainage. The water supply and sewers represent several miles of each kind of pipe.

Q. In the list you have chutes and chutes?

A. Yes, sir.

Q. State to the special master what they are for; how extensive they are generally.

A. We have twelve or thirteen railroad tracks. Along the line of each there are chutes and pens which are used in unloading stock, a platform from which stock is unloaded down into a pen immediately connected with it, just large enough for each individual car-load. Of these chutes we have over four hundred.

Q. Is the list as to the numbers correct?

A. Yes, sir.

By Mr. LITTLE: Are these chutes owned by the company?

A. Yes, sir.

—. State whether the list, Exhibit D, as to water mains is correct.

A. It is correct as to sizes and I expect it is correct as to measurements. Those were made by our engineer, in whom I have confidence.

Q. Who owns these water mains?

A. The Kansas City Stock Yards Company.

Q. How long have they been operated, do you recollect?

A. They have been, like the rest of the yards, a growth commencing at the time the yards were first opened, and have gradually grown to their present magnitude.

Q. What is the object of the water mains?

A. To supply the stock with necessary water for drinking and wetting down and cooling it in hot weather, and also for fire protection of the property.

452 Q. State whether or not the Kansas City Stock Yards Company owns a water plant of its own.

A. It owns a heat, light, and power plant that I spoke of a little while ago, and the water we use is from drive-wells. We use it as an auxiliary for fire protection.

Q. Where do you obtain the other water that is used in the yards?

A. From either city. We are fixed so as to receive water from Kansas City, Missouri, or Kansas City, Kansas. At present we receive it from Kansas City, Kansas.

Q. Who pays for that water?

A. The Kansas City Stock Yards Company.

Q. Do you know anything about its general use in the yards?

A. Yes; it is just as free as the air. Any man who has stock and wants water the hydrants are fixed so he can turn it on and take all he wants from morning until night; no limit whatever to it.

Q. Outside of the charges for yardage or for hay, corn, and grain, is there any special charge for the water which is used?

A. None whatever. The charge for water service is embraced in the charge for yardage and feed for simplicity.

Q. In speaking about the electric light, state in that connection—state what part of the days those yards are operated?

A. Twenty-four hours every day from the beginning of the year to the end—at all times. There is no time from which we close taking care of stock.

Q. How is it as to Sunday?

A. Sunday we have a regular gang of men just the same receiving stock, yarding and feeding it, at any time of the day or night. We always have to have the maximum force of men on hand—a force of men on hand for maximum business, whether the business comes or not.

453 Q. In this list which you have furnished—Exhibit D—there is a statement of tunnels, viaducts, and bridges. Tell generally where they are and what they are used for.

A. The tunnels are for connection between the main yards and

the Missouri Pacific yards; under the railroad yards of the Union Pacific and Missouri Pacific systems. Of course we cannot work across the railroad tracks where there is so much switching, and, it being necessary to communicate and to bring stock back and forth, we have to have these tunnels, which are conceded us by the railroad companies. In addition to them we have a long viaduct going over those systems of tracks, the tunnels not being sufficient for the business, and also being subject to being shut up, as they are now, with high water. We have to be able to get over.

Q. State whether or not those tunnels are all necessary in the operation of these yards for the convenience and benefit of shippers of stock.

A. Absolutely necessary. We must have communication not only between the two yards, but from the main yards to the packing-houses north of the yards. All the stock that is bought by the Armour Packing Company, the Fowler Packing Company, and Dold Company must be taken from the yards through these tunnels or over these viaducts.

Q. What bridge do you have there?

A. We have a bridge across the Kansas river connecting the quarantine yards with our main yards. This bridge is for the use of cattle coming from the quarantine yards to the packing-houses on this side of the river; also for the hogs and cattle going from the native yards across the Kansas river to the packing-houses of Schwarzchild & Sulzberger and Swift & Company, and also for the convenience of buyers and sellers in going to and from their business in connection with the buying and selling of the stock.

454 Q. State whether or not it is necessary in the operation of the yard.

A. It is absolutely necessary.

Q. About how long is that bridge?

A. A little over six hundred feet, is my recollection.

Q. There are various other viaducts that you have described. State whether or not they are necessary in the operation of the yard.

A. We have a good many thousand lineal feet of viaducts over the main yards leading from various points which are a necessity and an outgrowth of the development of the market. Our market is a very short one, commencing at eight or nine o'clock in the morning and being practically over at noon, and the stock received and sold is ordinarily sold within that time. Stock after being sold must be weighed quickly; they are shrinking all the time; therefore we must supply the most complete facilities for rapid transaction of the work. In order to weigh the stock rapidly, we built these viaducts rising from the scale-pens to receive the stock after it is weighed and take it back to the yards instead of having to work it back through the same alleys and meeting other stock that is on the way to the scales; so that these viaducts are absolutely necessary, and we will have to increase them very materially in the near future, the number of them.

Q. You spoke about rapid and prompt service in the way of

caring for cattle and weighing them. For whose special benefit is this rapid and prompt service performed by the company?

A. For the benefit of the owner of the stock, since any delay results in shrinkage of the animal in weight and consequent loss to the owner in the sale.

Q. You speak in this Exhibit D of fences, hay racks, troughs, and gates generally. What are they for?

455 A. The fences and gates represent the pens which are necessary in order that each particular lot of stock may be kept entirely separate from any other stock and not allowed to be mixed in any way in order that its identity may be completely maintained and established. The feed-racks are racks in these pens in which the stock yards company distributes the hay ordered by the owner or his agent and which the cattle eat in being prepared for sale; as the technical expression is, "being filled"—fed and watered.

Q. State whether or not in the reception and distribution of cattle you do it by car lots or large numbers, or whether each head of cattle has to be taken care of separately.

A. We receive them ordinarily in lots. The shipper may have from one to 25 cars that can be yarded together, in case we have a pen large enough for them, and they are all of one class. Again, some shipper may have twenty-five cars that have to be yarded in twenty-five pens, that have been classified differently from each other, and we have to have a different pen for each particular lot according to his wish. One car-load may be subdivided. I have known a car-load to be subdivided into as high as twelve or fifteen lots—almost practically individual animals—and in that case we have to have an individual pen for each of these. In other words, we stand ready to accommodate the owner at any and at all times with whatever facilities he thinks to his best advantage, so far as it is possible in developing the business.

Q. I asked you about fences, hay racks, gates, etc.

A. I have just answered.

Q. You have marked here some riprap. What is the object of that? Explain.

A. That is to protect our land from the encroachments of the river. We have two river frontages, having yards on both sides of the river; have several thousand feet of river front that we

456 have to protect in the most substantial manner against ice gorges and high-water floods of the Kansas river.

Q. What about railroad tracks belonging to the company?

A. We have several miles of railroad tracks.

Q. About how many?

A. I should judge three or four miles, consisting almost entirely of switches, from which stock is unloaded. These tracks do not extend beyond our stock-yards grounds, but were built by the stock yards company and maintained by the company and controlled by a railroad yardmaster or two of them, one for day and one for night.

Q. Under whose control?

A. Under the stock yards company's. It was a necessary expense in order that the company might control the situation so as to do a maximum unloading business on a minimum amount of track. Under any other system each railroad company would have to have its own tracks into the yards, and would monopolize more ground than could possibly be conceded to it. As it is, we have the control of it, and just as fast as the track is vacated by one train we let the train of another road come right on to the track, and that is also a great advantage for the shipper, because we do all of our business of unloading in each case from the track from which we can yard the stock most expeditiously, and thereby get it ready for the market the soonest.

Q. You have marked here eight cars. What are they for?

A. Those are some special cars that we had built some years ago—some fifty-foot cars for delivering stock to the Olcott Packing Company, about five miles from the yards, which has since gone out of business.

Q. You have those cars in use in the yards now?

A. No; we are not using them at present. They are standing idle just now.

457 Q. The sewers you have described—state generally in what conditions those yards are kept. I mean physical condition, as to buildings, fences, grounds, sewers, and the other necessary improvements and appurtenances by which they are operated.

A. They are kept in first-class condition at all times. It is a matter of common remark by the people doing business at the other stock yards that no other stock yards in the country are kept up as the Kansas City stock yards are in the way of construction, fences, buildings, and general cleanliness of the yards.

Q. I was going to ask you that.

By Mr. LITTLE: I object to this "common-remark" business, and move to strike it out as hearsay.

By Judge HORTON: That may be stricken out.

Q. State about the cleanliness of the yards, of your own knowledge, how they are cleaned.

A. They are kept practically clean. We have a large force of men with carts and teams at work all the time, every day, cleaning the yards at all times. Whenever a pen is anywise bad the men go right into it and clean it out and keep the yards clean all the time.

Q. Are you acquainted with the operation of other stock yards in the country by inspection and observation?

A. Yes, sir.

Q. What stock yards have you visited and examined?

A. I was employed in the Chicago stock yards four years before I came to these yards, and knew them practically at that time as I do these now. I have been in the St. Louis stock yards, both east and west of the river, a great number of times. I have been in the Omaha yards a number of times, in the Cincinnati yards, the Denver yards, Pueblo yards, Fort Worth yards, Salt Lake yards, and

Wichita yards, and I have carefully examined all of them in the course of my business from time to time during the last ten or fifteen years.

458 Q. As to the condition of your yards, in the operation of the same for the benefit of the shipper, their cleanliness, etc., how do they compare with these other yards that you have visited and know?

Mr. Boyle objects to the question as incompetent, irrelevant, and immaterial.

By the MASTER: I cannot see in what respect that could be material. He has testified that they keep the grounds, pens, and all that sort of thing in first class condition. I cannot conceive at this time the relevancy of the question.

By Judge HORTON: We propose to follow this up by showing the charges in all other yards, and we propose to show the charges in this yard and, as evidence of what is reasonable and fair, the fact that our yards are kept in a better condition and perform better service. We are able to prove that, and then we say that the charges at these yards are no more than the charges at any other yards.

By the MASTER: I will sustain the objection for the present.

Q. How do the charges for yardage by your company compare with the charges made by the other yards which you have mentioned?

Mr. Boyle objects to the question as incompetent, irrelevant, and immaterial and utterly foreign to the issues in the case.

By the MASTER: I will sustain the objection for the present.

By Judge HORTON: I offer to prove by this witness that the yardage charges at the stock yards mentioned by the witness are as follows:

459 Location of stock yards.	Cattle.	Calves.	Hogs.	Sheep.
Kansas City, Kansas & Missouri	25 cts.	10 cts.	8 cts.	5 cts.
Chicago, Illinois	25	15	8	5
East St. Louis, Illinois	25	10	8	5
St. Louis, Missouri	25	10	8	5
Omaha, Nebraska	25	10	8	5
Denver, Colorado	25	10	8	5
Pueblo, Colorado	25	10	8	5
Cincinnati, Ohio	25	10	8	5
Indianapolis, Indiana	20	10	7	5
Louisville, Kentucky	25	10	7	5
Sioux City, Iowa	25	10	8	5
Fort Worth, Texas	25	15	8	5
St. Paul, Minnesota	25	15	8	5

Q. Do you know, in the same connection, the market prices for hay, corn, and grain at these various stock yards that the shippers pay?

A. I know it in reference to the Chicago stock yards, the Omaha

stock yards, the two sets of yards at East and West St. Louis, at the Denver stock yards, the Pueblo stock yards. That is all I know, of my own knowledge. I have letters from all the others.

Q. In that connection state, for the services performed and the furnishing of hay, corn, and other grain at those yards, what the market prices are.

By Mr. BOYLE: I object to the question as incompetent, irrelevant, and immaterial, and not pertinent to any issue in the case.

By the MASTER: It seems to me that comes in the same
460 class as the other question. I will sustain the objection for the present.

By Judge HORTON: I now offer to prove by the witness that the charges for hay, corn, and other grain in the yards mentioned are as follows: At Chicago yards the prices for feed and service, covered by the charge for feed, is, on timothy hay, $1.50 per cwt.; on prairie hay, $1.00 per cwt.; on corn and oats, $1.00 per bushel. At the National yards and Union yards at St. Louis the same prices. At the Omaha yards they do not furnish timothy hay, but charge one dollar per hundred for prairie hay and a dollar per bushel for corn and oats.

Q. State, in this connection, what has been the charge for the services included under the term yardage in the Kansas City stock yards.

A. In the Kansas City stock yards the services included under the head of yardage has been twenty-five cents per head on cattle, ten cents per head on calves, eight cents per head on hogs, and five cents per head on sheep.

Q. What has been the charge for the services rendered and the privileges furnished under the head of hay, corn, and other grain furnished to shippers?

A. The charges at the Kansas City stock yards are, for timothy hay, one dollar per hundred pounds: for prairie hay, one dollar per hundred pounds; corn, one dollar per bushel; oats, one dollar per bushel, and bran, one dollar per hundred pounds.

Q. The price on timothy hay and prairie hay is the same?

A. Yes; although the prairie hay generally costs us from two to four dollars per ton more.

Q. State, in that connection, what service is performed and rendered in connection with the sale of hay, corn, or other feed in the yards.

A. Possibly I can illustrate it better by giving a case that is liable to happen any day.

461 Q. Just go on.

A. A shipper shipping through the Kansas City stock yards for an eastern market—not designing to sell here—his car of cattle would be delivered by the railroad company at our platform. The stock-yards employés would handle that stock, drive it to the pens, wherein it would be placed—a pen that is paved, furnished with hay racks, and the best possible conditions for the stock to rest. The owner would go to our feedmaster's office there and sign an

order for probably one hundred pounds of hay; that is about the average feed. Our wagon would go to the feed barn or car and get the one hundred pounds of hay and take it to that pen and deliver it into the rack, shaken loose clear around so that the cattle could get to it and eat it to the best advantage; the water would be turned on and the cattle given all that they could drink, all they wished; in fact, water would be kept constantly before them, the trough full during the day. In the evening the owner, when he is ready to ship forward to other markets, would go to the railroad company and give his order to the agent that such and such a car of so many cattle in such and such a pen should be shipped out; that order would be turned over to the stock yards company and the stock-yards employés would take the car of cattle from the pen again, take it to the chute and load it into the car, and the owner would go with it to the eastern market. For this service the owner would pay the stock yards company one dollar for one hundred pounds of hay.

Q. Including all of this other matter?

A. Including all this service.

Q. Including the water?

A. The stock yards company would have given all this service in handling the stock—the use of the pen and the racks
462 and the hay, which costs the stock yards company 35 cents and probably ten cents' worth of labor in delivering the hay.

By the MASTER: You are speaking of a car-load?

A. Yes; this is a hypothetical car-load—probably ten cents' worth of water, which would make an immediate cost of fifty-five cents to the stock yards company, leaving forty-five cents for the general use of the yards and the other services of loading and unloading and driving back and forth. In addition to this there is the question of risk. The stock yards company, in case one of these animals, through any fault in the construction of the yards—a hole in the floor or paving, or any accident almost that can happen that an animal could injure itself—either an injury or death—or if cattle are mixed with other cattle, whereby one or more, or even all of them, are lost and not to be immediately found when the owner wants them—the stock yards company pays the loss. We have never contested any just claim. For this insurance there is no charge except as it is covered by this dollar for the one hundred pounds of hay.

Q. Well, there is no charge for yardage in such a case?

A. I was just getting to that. I started in with a hypothetical case where a car was going through—not sold here.

Q. Now, state to the master, when an animal is shipped through, but is stopped here, this service, including the hay and corn—whether the shipper has to pay any yardage at all.

A. None at all.

Q. Then, in addition to all the services performed and the water that is furnished, the only charge made under the head of hay or corn—whatever it is—includes all these other services?

A. Yes, sir; one dollar is the entire amount that the owner
463 pays for the car-load of cattle in such a case, directly or indirectly.

Q. From the time, in this particular case, that the cattle is received by your company until it is reshipped to the outgoing railroad, under whose entire control are the cattle or stock?

A. They are under the entire control of the Kansas City Stock Yards Company, subject to the owner's orders, and under those orders the stock may be sold on the market or may be driven out of the yards directly into the country. In case they are driven out instead of being shipped there is no charge whatever except for such feed as they eat while in the yards.

By the MASTER: I do not know that I understand that.

The stenographer read the answer of the witness.

By the MASTER: You are testifying with reference to a car-load of stock that is billed through east to some other point, that lays over from morning until night, and afterwards the shipper concludes that he will not send them any further east and will sell them in this market. In a case of that kind there is no charge for yardage?

A. If they sell, there is a charge for yardage; but if they drive out under his own name, there is no charge for yardage.

By Judge HORTON: My understanding of the witness is that where cattle are shipped to St. Louis or Chicago or any other place outside of the yards and the man does not change his mind and sell them in the yards there is no charge for yardage at all.

A. There is no charge for yardage unless the title to the stock changes at these yards.

Q. As a general thing, how many cattle are there in a car?

A. The average is about twenty-three head per car.

464 Q. About how much hay is fed to the car-load?

A. Our average for 1896 was 115 pounds.

By Mr. LITTLE: That is, at one feed?

A. Yes, sir.

Q. How many head of hogs in a car?

A. About seventy.

Q. About how much corn is fed to a car-load of hogs?

A. Well, it will average about a bushel and a fifth, I believe.

Q. A little over a bushel?

A. May I refresh my memory from my figures?

Q. Yes.

A. One and a fifth.

Q. How many sheep are there in a car?

A. About ninety.

Q. How much corn is fed at a feed?

A. About fifty pounds of hay; they do not feed corn.

Q. To the car-load?

A. Yes, sir.

Q. Now, when cattle are billed through or are sent through the

yards without being sold there, state whether or not as a general thing there is more than one feed.

A. Only one feed, with very, very rare exceptions.

Q. That we may get it absolutely clear, you state that when cattle, hogs, or sheep are billed through the yard they are taken out and cared for, watered and fed, and that no yardage whatever is charged to the shipper and the only charge is the price of the hay?

A. That — the only charge, directly or indirectly.

Q. And when billed through the general thing is only to have one feed?

A. One feed.

Q. Who is it that drives this cattle or other stock to another road after they are unloaded?

A. The Kansas City Stock Yards Company handles them entirely in such a case, as has been stated.

Q. State whether the owner has any trouble or concern in the way of rendering services about them in that case.

A. None at all, except it is his own pleasure to walk along
465 and see where they go to—what pen they are put into.

Q. Have you any general knowledge about how many are billed or shipped through? I do not want accurate figures particularly.

A. I have no accurate figures, but I can get very close to it. In a general way I would suppose from our records about four and one-half per cent. of the cattle and calves are shipped through. I cannot give the figures on the others. There are practically no hogs that go through; the one-half of one per cent. is represented by dead hogs.

Q. Now, as to cattle that may be or are sold in the yard, let me ask you in a general way what time in the day these cattle reach the yards.

A. All the cattle reach the yards at the same time—that is, the great bulk of the receipts, being designed for the market, the railroad companies, to accom-odate the shippers, arrange their time of arrival so that the stock is received, unloaded, and yarded between the hours of midnight and eight o'clock in the morning, with probably three-fourths of it between five o'clock and eight o'clock in the morning.

Q. What time is the market for the sale of stock; what time are the sales generally made?

A. The market opens from half past seven to half past eight; if it is a sharp market a little earlier; if it is a little draggy it may run along as late as ten o'clock before they begin to sell.

Q. State practically about the feeding of cattle that are sold there in the yards; just state *now* generally after the cattle are received. Describe fully the course of a car-load of cattle which is received and sold in the yards from the time it is received until some disposition is made of it.

A. Like the other car mentioned, it is se-t to our platform by the

railroad company; the stock-yards employés unload the
466 stock and take it from the chutes if the commission man or his helper is not there.

Q. Whom does the commission man or his helper represent?

A. He represents the owner. His business is to sell the stock.

By Mr. BOYLE: Who is the helper?

A. He is hired by the commission man to help him sort the cattle. The commission men have their assistants who assist them in sorting the cattle, grading them up for the market, putting each class by itself, also in turning on the water for the cattle and watering them just when they please, as much as they please, and as long as they please. The stock yards company does not turn on the water from the fact that it has grown to be an art in the way of filling stock; they must not have water a minute too soon or a minute too late; it must be just the minute they have got the hay eaten and their throats are very dry.

Q. We will come to that a little later. Who takes the stock first from the chutes when it is sent to the yards for sale?

A. The stock yards company or the helper of the commission men.

Q. What is done with them then?

A. Taken to the stock-yard pen where they are placed for feed and water.

Q. Who designates where they shall go?

A. Ordinarily the commission man expresses a preference, and when it is not to the inconvenience or detriment of other shippers of stock the stock yards company concedes the point, because thereby they assist the salesman in realizing the best price possible.

Q. How are they sold—in what way—what is the way of selling cattle there?

A. The commission man or his assistant orders feed; the stock yards company delivers it in the other case—but I am a little ahead.
Before the feed is ordered the stock is assorted if necessary,
467 then they are fed as in the other case, and when they are fed the water is turned on. In the meantime the commission man, the salesman, has brought the buyer to the pen, and together they have looked the cattle over and agreed upon a valuation per pound, weight to be determined when weighed upon the stock-yards scales by the stock-yards employés. After this agreement the commission man, as representing the owner, has the privilege of weighing them at any time he chooses short of the time of closing business for the day.

Q. At what hour is that?

A. Well, it is tolerably late; we call it three o'clock, but it is often five just by one bunch following another. There is no arbitrary time to close, but when the stock is just at its fullest, has drank the greatest possible weight of water that the seller thinks he can induce them to take in, he orders them sent to the scales and his men bring them to the scales; our employés receive them in the scale-pen, drive them onto the scales and weigh them and take them from the scales to pens for the buyers.

By Mr. BOYLE: If they are bought by certain packers, where are they taken?

A. To certain pens; we assign certain large pens to each of the packers who are heavy buyers to bunch their cattle in as they accumulate them—a few hundred. Their men take them to the packing-houses.

Q. State whether or not the cattle are weighed before they are fed and filled with water.

A. Only in very rare and exceptional cases.

Q. How? Just tell the master how they are fed, how they are filled with water before they are weighed, those that are sold in the yards.

A. They are fed by the stock-yards employés whatever amount of hay is ordered by the owner or his commission man.

468 Q. About how much?

A. The average last year was 115 pounds per car-load.

Q. Of about twenty-three cattle?

A. Yes, sir. Now, in explanation of that: There is a little more detail of that feeding. A lot of cattle may be assorted in two or three pens, two or three lots, before they are ready to be fed. In watering, they must get as much as possible, because they must get the benefit of it in the weight; so in feeding this one hundred pounds of hay we are liable to divide the cattle into two or three lots instead of one, and have, therefore, that many times the expense and work of feeding.

Q. How is it fed? Tell the court how it is done.

A. The hay is delivered in the pen by the stock-yards wagons and employés, shaken up in the racks for the cattle, and the owner or his representative turns on the water at his pleasure. There is a handle to each hydrant in each pen, so that the water is always ready for the owner at any time it is to his best advantage for his stock to get it.

Q. Is there anything fed with the hay?

A. No.

Q. No salt or anything?

A. No; they would hang a man down there who would salt his hay.

Q. Where are these troughs?

A. There is a trough in each pen, with ample room for a car-load of cattle to drink fully and freely.

Q. How much hay is fed to each head of cattle?

A. About five pounds, on an average.

Q. How much water, on an average, do they take?

A. I have stated in my affidavit thirty pounds. I consider that an estimate that would not be challenged by any practical man.

469 Q. What do you say now?

A. I will stand to the thirty pounds, although in occasional cases I have known them to run up to seventy-five pounds, of cattle drinking that much water, and of course as soon as the cattle are filled, get all they will drink, they are weighed, and the

owner gets the benefit of the one hundred pounds of hay, which costs him a dollar.

Q. One dollar per car-load of stock?

A. Yes, sir; and seven hundred pounds of water, which would make eight hundred pounds, which costs him a dollar, and he sells them possibly for five cents a pound and makes forty dollars—thirty-nine dollars on an investment of one dollar.

Q. We come back to the particular animal. If the animal has five pounds of hay and thirty pounds of water, you say that the weight upon each sale is not taken until after the animal eats and drinks this hay and this water?

A. That is correct.

Q. And for that hay and that water and for all the service you render, including the yardage, what is the general charge per head?

A. There was an oversight in my last answer. I was thinking of stock in transit. I spoke of paying one dollar. He pays twenty-five cents per head for yardage on the cattle in case he sells, and that twenty-five cents per head on the twenty-three head would be $5.75, and a dollar for the hay would be $6.75, that it would cost him for his forty dollars.

Q. Now, I come back to a single head. You take a single head of cattle, what is the charge for all of these services which for convenience is designated as yardage and feed?

A. For the services for that particular animal the owner would pay five cents for hay and twenty-five cents for yardage, making thirty cents.

470 Q. Now, after the animal reaches the yard, how much additional weight is given to it by the hay and water that is furnished by the company?

A. Thirty-five pounds is the estimate we have used.

Q. What additional price, then, would the owner or shipper get, the average price, on account of the hay and water furnished?

A. Using the same prices as in the case of the car-load, five cents per pound, it would be $1.15.

Q. Now, let me ask you in this connection whether this feed and water are necessary for the support of the animal at that time or merely for the purpose of filling it up and getting greater weight?

A. Entirely for the purpose of filling it up and getting greater weight.

Q. Why is that so?

A. The owner has no further interest in increasing the health of the animal or its general comfort, as he is just disposing of it to other parties, and desires to get just as much for it as he possibly can, and therefore he adopts this custom.

Q. Let me ask you again whether or no the feeding and watering is before the sale or after the sale?

A. It is after the sale, but it consummates the sale; the feeding is before the weighing.

Q. That is what I want to know directly; does the owner or

shipper or his representative who sells the cattle feed the same after the sale or before?

A. He does not feed them until afterwards; they are shipped out or driven out afterwards.

Q. Before he weighs them, is this feeding and watering done?

A. This feeding and watering is all done before he weighs them.

Q. After he weighs them, as a general thing, is there any feeding or weighing done by the owner or his representative?

A. You mean this original owner or his representative?

Q. Yes.

A. None whatever.

471 By Mr. DANA: I understand you to say this: That the seller of the cattle, the man who owns them, when they are brought into the yards does not have them fed until after he has sold them; is not that true?

A. That is not exactly so, but it is so in spirit, too. The answer is he assumes, when he comes on to the market, that he is going to sell them, and before he weighs them he is going to get the most possible weight in them; he will order his feed as soon as he comes in, and then go and make his trade afterwards; but the feed is a factor in the sale and has always that much added to the animals' weight.

By Mr. DANA: What I am getting at is whether or not the feed is put into the animal after the bargain of sale has been consummated and before they are weighed?

A. Yes and no; just as it may chance; just as a buyer and seller may happen to a pen; the feeding and watering is a routine matter; the buyer and seller go to a pen half an hour before the feed is put in and make their trade, but the seller has the option with the buyer of getting the full weight of this feed and water any time during the day that he pleases; he weighs the stock so as to get the benefit of it.

Q. But there is no weighing of an animal before the feeding and watering is had?

A. No, sir.

By the MASTER: There is always this feeding; as soon as the stock is unloaded he gives his orders and it is brought around for the stock?

A. Yes; he assumes he is going to sell and he wants this extra weight.

Q. He could sell, if he desired, without this feeding and watering, couldn't he?

A. Oh, yes.

Q. I mean is it necessary in order to make a sale for the buyer?

A. No, sir.

472 Q. For whose special benefit is this feeding and watering?

A. For the seller absolutely.

By Mr. BOYLE: Mr. Child has stated that the seller gets the weight, this increased weight, no matter when he sells the cattle—this increased weight—he gets the benefit of that. Now, what I want to ask is this: Suppose he should unload his cattle at nine

o'clock, should feed at half past nine, and should not sell the cattle until four o'clock that afternoon, how does he get the benefit of that feeding and watering?

A. He loses it in that case.

Q. Is that the practice in the yard, of weighing at four o'clock?

A. Occasionally it is.

Q I mean generally?

A. Generally, no; generally everything is weighed up by noon.

Q. Tell the master how soon after the feeding and filling the weighing is had.

A. That is just what I wanted to go right in there and explain what might seem a little mixed before—as to the time when the trade is made and as to the time the feed is delivered. The feed is delivered and the cattle fed first. Then they are kept off of water usually until the trade is made, whether that is ten o'clock or four o'clock, but as soon as the trade is made then the water is turned on and they are allowed to drink and in the meantime they are getting thirstier all the time. At any minute that the seller shall elect, after the trade is made up to the close of business, it is his prerogative to have the stock weighed just when he thinks he will get the most weight, whether in five minutes or two or three hours.

By Mr. BOYLE: After the sale is made?

A. Yes, sir.

By the MASTER: What time do these trains usually get in?

473 A. The bulk of the business from five to eight o'clock in the morning; commences about midnight ordinarily.

Here the master arose and the further taking of testimony is adjourned until 2 o'clock p. m.

Afternoon session.

2 P. M.

Parties all present as before.

Taking of testimony resumed.

Mr. CHILD on the stand.

Direct interrogatories continued by Judge HORTON, counsel for the complainants:

Q. Before the adjournment we were talking about feeding, watering, and yardage. Will you explain a little more clearly whether it is for the benefit of the cattle that this feeding and watering is done before the weighing is done or not.

A. It is not. The entire aim on the part of the man who orders the feeding and watering done is to make increased weight to sell.

Q. Now, as to the buyer, as soon as it is bought and delivered, can he take the cattle out of the yards?

A. It depends on whom the buyer is. In case it is one of our large packers, the stock yards company takes the risk of giving them an open order.

Q. What do you mean by an open order?

A. A permit to take any stock which they claim out. Of course

in doing so, the stock yards company assumes all the responsibility of the stock not belonging to them and having to settle with the owner. As to other stock—with anybody else who has not a great investment here and that cannot be reached in case of trouble—it requires a title order to be received from the shipper, the
474 seller to the purchaser, and all the charges paid on the stock up to that time, and that order being passed through our freight office and stamped is evidence that the charges are paid and that the title is good in the party presenting the order, and upon that order being stamped and presented to our employés at the gate the stock is turned out to them and they take it out of the yards.

Q. What proportion of the stock purchased—that is, sold in the yards—about what proportion goes out on these general orders?

A. To the packing-houses?

Q. Yes.

A. I read the figures early this morning of the stock that is slaughtered here in Kansas City. It is practically all slaughtered at the packing-houses, because there is very little butcher stock aside from that that goes to the packing-houses. It amounts to nearly 900,000 cattle, fifty-eight thousand and odd calves, 2,300,000 hogs, and six hundred and eighty-five thousand odd sheep.

Q. Now, as to this cattle and stock, state whether or no as soon as they are bought or purchased in the yards they can be at once removed by the purchaser or buyer.

A. Yes, sir.

Q. Then if he wants to feed them anywhere else outside of the yards can he do so?

A. Oh, yes.

Q. Is any of this water and feed for the benefit of this class of buyers?

A. No, sir; none at all.

Q. And that buyer need not buy any of his feed or water; I mean for his benefit?

A. No, sir; there is no compulsion on the part of anybody to buy feed.

Q. Now, you spoke of the words yardage and feed; what do the words yardage and feed include?

A. The charges collected under the head of yardage and feed cover all the expenses that the stock yards company is put to in taking care of the business entrusted to it.

475 Q. State a little more specifically.

A. All the unloading, yarding, feeding, weighing, risk of loss through damage or mixing, and, in fact, everything in connection with the business is represented by the charge of the stock yards company.

Q. What do you mean by mixing?

A. Where through inadvertence or fault of the stock yards company two lots of stock of different owners are allowed to get together, in which case both owners generally claim damages.

Q. Where the cattle or other stock is actually sold on the market,

state what, if anything, the owner, shipper, or his representative has to do with that stock after it is received by your company until it is sold; so far, I mean, as taking care of it and looking after it is concerned.

A. Simply in person or by an agent he gives a written order naming how much feed he wishes that stock to have—that is, all directly until it comes to the stock being sold; then the stock being sold and being brought to the scales, our men receive it and weigh it at the request of the owner or his representative. At the same time the business is so conducted that in classifying the stock it is necessary to subdivide sometimes, as I think I said this morning, in extreme cases, into ten or twelve lots. For each of these subdivisions of a car-load or number of car-loads the stock yards company has to furnish a separate pen for the use of that stock until it is sold and bunched up with some other stock by the buyer.

Q. You spoke this morning about stock being divided into various subdivisions in different pens; state whether or not that requires additional extra service on the part of the stock yards company.

A. It requires extra service, as we have our yards divided into divisions, and each division has a man in charge who keeps a thorough charge on all stock in his division, and he must be sure to give this stock all additional pens necessary to make a record
476 of it, and be ready at all times to say where it is in case any one interested asks, and to assort it out to those who have authority to receive it from him.

Q. Is all of that service included under the head of yardage and feed?

A. Yes, sir.

Q. You spoke about water this morning. State how that water is measured to your company.

A. The water is received from the Metropolitan Water Works Company of Kansas City, Kansas, and all comes through meters and is measured to us, and bills presented at the contract rate every month for every gallon received.

Q. State whether or not the value of all that water and the service of furnishing it is included under the expense of yardage and feeding.

A. Every particle of that expense is included in the feeding and yardage charge.

Q. Who has to pay for that water?

A. The Kansas City Stock Yards Company.

Q. How free is it to the shippers of stock?

A. No limit whatever within reason; all that the stock can use or require is given, and the only limit we place upon it is just simply turning it loose.

Q. In other words, not to be wasted?

A. No; but everything that even fancy could suggest that the stock required for drinking or cooling in hot weather is used. Millions of gallons are used in just sprinkling—playing it over the hogs.

Q. What is necessary in certain seasons of the year as to the additional use of water for the hogs?

A. During the warm months the hogs get very hot if they are heavy and quite fat.

Q. What is done with them as to water?

A. When they seem to be, in the judgment of the owner or his representative, warm they are permitted to put a hose on the
477 hydrant of the pen in which the hogs are and to play the water over the backs of the hogs to cool them, and, as I said a moment ago, this is done to the extent of millions of gallons during the warm weather; the same thing with excessively fat cattle also.

Q. Is any pay exacted for the water so used, except as included in yardage and feed?

A. None whatever.

Q. Do you know anything about a plant for the purpose of aiding in dipping sheep?

A. Yes, sir.

Q. What do you mean by dipping sheep? Just tell the master.

A. It is necessary to dip sheep in various preparations to kill what is called the sheep scab. The United States Government, Department of Agriculture, which has charge of the live-stock interests of the country, has established certain quarantine rules, and in compliance with them or a portion of them the stock yards company was compelled to put in this sheep-dipping plant, where any parties wishing to buy sheep for the country—that is, to take out of the yards, except to slaughter—may have them dipped in a preparation which is approved by the U. S. inspector located at the stock yards; that plant the stock yards company has built and thoroughly equipped at a cost of about twelve thousand dollars.

Q. State what kind of water, as to whether hot or cold water, has to be furnished to it.

A. The water has to be hot, ordinarily at 105 deg., with the curative agent mixed with it. The furnace for heating that the stock yards company furnishes, and also the fuel.

Q. State whether or not any charge is made for furnishing this hot water.

A. There is no charge whatever made for it by the stock yards company.

478 Q. Except in the yardage and feeding?

A. Except in the yardage and feeding. It is just that much more expense added to the conditions which existed before.

Q. You spoke about giving an order on the feedmaster. Where is the feedmaster located?

A. The feedmaster's office is in Missouri, about four hundred feet from the line.

Q. State whether or not any hay, grain, or other article is sold or shipped except upon the order to the feedmaster in Missouri.

A. No, sir.

Q. From how many States are cattle shipped to your yards, generally?

A. I think about twenty-six States and Territories last year.

Q. Where is the market for the sale of your cattle—in what State?

A. Probably two-thirds, I guess, of the cattle division is in Missouri and about one-third in Kansas.

Q. State as to the cattle coming from the State of Kansas. About what part of them are transported to Missouri to be sold?

A. About two-thirds.

Q. You spoke about these tracks. State their location as to these two States, whether all in one State or in two States or how it is.

A. The tracks we use on the ground owned by the company comprise seven tracks in Kansas and two in Missouri.

Q. How are they operated; between the States or all in one State?

A. The stock is unloaded from whatever track is most convenient to the business and the one that will produce the quickest results in getting the stock to the desired pens. Some are unloaded in one State and some in another, just according to the condition of the day's business.

Q. State whether or not any stock shipped from Kansas is unloaded in Missouri or *vice versa*.

479 A. The stock that is received from one road and shipped out by another is just about in proportion to the business, I presume, changed from one State to another. The bulk of it is received in Kansas, possibly, at the present time. I presume just about the percentage of the tracks, probably seven-ninths of it, is unloaded in Kansas and reloaded in Missouri and two-ninths unloaded in Missouri and reloaded in Kansas. Our Missouri tracks we are not using very extensively at present, but any stock that comes in on the Kansas side is liable to be loaded out on the Missouri tracks.

Q. State why it is that you make out the bills for yardage and feed.

A. For the sake of simplicity. The stock yards company followed the custom that was in vogue in the Chicago yards when these yards started, which they assumed that the Chicago experience had demonstrated was probably the best and most satisfactory all around, instead of having a list of charges, whereby the feeding would take a nominal percentage of advance, and other charges to cover the different points of service, such as driving, feeding, use of yards, etc. Just for simplicity it was made to come in under these two items.

Q. Do you know anything about the fences, pens, etc.? State the manner of their use as affecting their wear or value of life.

A. Yes, sir.

Q. State about that.

A. The stock yards are built in extra heavy style, of extra good material, because of the liability of the stock yards company for any and all damages through stock being injured by defective construction or by being mixed, breaking down through floors, or anything of this nature, and for this reason the construction has to be the very best of its kind as to material and workmanship.

Q. Now, what kind of use is it subject to in the way of wearing out and being renewed?

480 A. The use by stock, strange stock being yarded in it—*i. e.*, stock strange to each other, collected in the country from different farms—fighting, goring each other, they wear the fences very rapidly at times, so they have to be very strong, and when they are deteriorated by decay or wear have to be replaced with new before they appear to be really worn out. For instance, the three-inch floors—the three-inch flooring we cannot wear it down much more than two inches until it is so thin that the weight of the animal will break through and subject that animal to injury that we would have to pay for; therefore we have to sacrifice that one-third of the material.

Q. About how often are renewals necessary in the way of fences, pens, and improvements of that character?

A. I presume, as a general average, it would run somewhere from seven to ten years.

By the MASTER: Does that include the flooring?

A. Yes, sir; I was going to explain about the flooring. In the alleys where the heavy loads of feed and the horsemen who are selling the stock with the toe-calks in their shoes, and the extra wear, our alley floors do not last over about three years, but in the pens we call them about five years; then the fences and buildings last a little longer without having to be renewed.

Q. What are the alleys paved with?

A. They have been, until the last two years, *been* paved with three-inch cypress planks. We are now starting in with vitrified brick, and while it is costing a good bit more money, we think it will be economy in the long run.

Q. Do you know whether any of the packing-houses were brought to this city and adjacent to the yards there through the efforts and expenses of your company?

By Mr. BOYLE: I object to the question as incompetent, irrelevant, and immaterial. It cannot possibly throw any light
481 on the subject by reason of the fact that packing-houses may have been induced to come here.

By Judge HORTON: Our contention is, and it is very important, and we will show later, that in order to establish a stock-yard market here to benefit the people of Kansas the stock yards company had to go to the packing-houses; that the packing-houses would not come to it, and that they could not be had unless they were paid; it goes right into the question of the value of these stock yards, directly. The stock yards are valuable, both to the company which owns it and to the patrons who use it, in proportion to the value of the service which is rendered and the value of the market which is furnished by these particular yards, and it is proper that we should show that we have built up a market there; it is within the issues in the case. It is alleged in our bill, and we propose to show, that we have paid money to get the packing-houses to come here. It is

a valuable element in all of this property and a proper one for proof in this case.

By Mr. BOYLE: It occurs to me, if your honor please, that such a line of testimony would be far-fetched, to show the reasonableness of the charges of this company to the shippers of the country, as it is to be judged by a determination of the value of this property. The mere fact that it was a business proposition of their own that they offered inducements to these industries to locate here—if they did it—cannot possibly enter into this discussion of the reasonableness of the rates fixed by the legislature. I do not think there can be any question about it. To admit such evidence would open the field
482 for a dozen side issues to creep in here. The court will take judicial notice of the fact that these business houses came here as a business proposition; they are not eleemosynary institutions; they did not come here for the benefit of anybody but themselves, and how that question can affect the question of the reasonableness of the charges fixed by the legislature is something which I cannot understand.

By the MASTER: The objection will be overruled.

Q. Do you know about the efforts that have been made by the company to secure packing-houses?

A. In a general way I know the transactions, but the details of it would be with Colonel Morse.

Q. What particular packing-house was the first to go into the business of buying fat cattle for export? This question is only to lay the foundation; it is only a preliminary question.

Mr. Boyle objects to the question as incompetent, irrelevant, and immaterial. The master overruled the objection.

A. The Schwarzschild & Sulzberger Company.

Q. What is their business?

A. They are packers and slaughterers, mainly of beef for export.

Q. About what time did they locate here?

By Mr. BOYLE: Is this upon the question, now, as to the profits that these packing-houses have made out of their investment—out of the capital they have got from these shippers?

By Judge HORTON: It is an actual element of the value of our property.

By Mr. BOYLE: How much money have you made by reason of the fact that these packing-houses have located here?

483 By the MASTER: I am inclined to think that the evidence is admissible, but I think its weight is problematical.

Q. What time was it that they located here?

A. My impression is it was in 1892.

Q. Since then, state whether or not the business of buying that class of cattle here has been increased or extended; and, if so, in what way, in a general way.

A. In a general way it has very heavily increased. We have drawn the heavy, fat cattle that are required for export here greater

distances in competitive territory than ever before, and the general market in that line has been improved and increased in volume.

Q. Have you made an accurate and careful estimate of what the increased value of stock at this market is over the markets of Chicago on the same days?

A. I made such an estimate a few months ago.

Q. State what it was.

Mr. Boyle objects to the question as incompetent, irrelevant, and immaterial. The master overruled the objection.

A. I made such an estimate, I think, some time in January, 1897, by taking the official reports of the two markets and taking the highest quotations given in each market for each month of the year on cattle, hogs, and sheep. On cattle, the Kansas City market, after allowing the accepted difference of thirty-five cents per hundred pounds between the two markets, which is conceded by all operators on the market as representing freight and shrinkage between here and Chicago——

Mr. Little objects to the answer and moves to strike out the words "accepted" and "which is conceded by all operators on the market" as hearsay.

The master sustained the motion.

484 Q. Is that of your own knowledge?

A. No; I have not shipped cattle; nobody denies it.

A. The difference in favor of Kansas City was 9¾ cents per cwt. on cattle, 9 cents per cwt. on hogs, and 17 cents per cwt. on sheep.

Q. Do you know the freight?

A. The freight is 23½ cents per cwt.

Q. What is the rate from Kansas City to Chicago?

A. 23½ cents per hundred pounds.

Q. Did you allow for this difference in making this estimate?

A. Yes, sir.

Mr. Little moves to strike out the entire answer of the witness giving the comparisons between prices at Kansas City and Chicago as immaterial. The master overruled the motion.

A. This difference, applied to the live stock received at the Kansas City stock yards during 1896, amounts to about $1,100,000 more than the same stock would have realized by being shipped to Chicago instead of to Kansas City, and, in addition to this, in explanation, I have only used the high quotation, as I said. This represents fat cattle. The stock cattle at Kansas City have sold very often during the year at higher prices, making no deductions for freight or shrinkage, than Chicago on the same day. Our stock market has been very high all the year, and making an estimate, which I do, on the half a million feeding cattle sent out from Kansas City market last year, will bring this up to possibly half a million dollars more, making about $1,600,000 for Kansas City on the receipts from Kansas.

Mr. Little moves to strike out the answer of the witness as a mere conclusion. The master overruled the motion.

Q. State what is the great stock market of this country—at what place.

485 A. Kansas City is the greatest stocker and feeder market for cattle in the country; it extends out for feeders almost as much as the other three markets combined.

Q. What is the next market?

A. The next market would be Chicago, the next Omaha, and the next St. Louis.

Q. Do you know from your knowledge how it is as to number of cattle—whether Chicago is the great market as to number?

A. Chicago is the great market, taking all classes of cattle.

Q. How is it as to hogs and sheep?

A. The same; it is ahead of all the others. Chicago is first, Kansas City is second, St. Louis third, and Omaha fourth in total volume of business done.

Q. I don't know that we got it fully understood as to furnishing feed and service in the way of hay, corn, and grain; how is that done—not going through all the matter, but just whether the owner goes to the barn and gets the hay, or whether it is delivered to him—how is it done?

A. The owner or his representative writes an order on the Kansas City Stock Yards Company.

Q. After they deliver the hay what do they do with it? How do you handle the hay when the men deliver it to the pen?

A. It is delivered into the rack and shaken up for the cattle.

Q. How about corn?

A. The corn is delivered and spread on the floor by the stock-yards men exclusively.

Q. Has the owner anything to do at all with this service?

A. Nothing at all, except to order the stock yards company to do it.

By Mr. DANA: How many men go with each wagon?

A. Two men with each wagon.

Q. Besides the driver?

A. No; the driver and one man. We have 16 or 18 wagons.

Q. Is there any charge made for these wagons and for these men, except in the charge for yardage and feed?

A. None whatever.

486 And in answer to cross-interrogatories propounded to him by Mr. Boyle, attorney general, the witness testified as follows, to wit:

Q. You are an employé of the stock yards company, Mr. Child?

A. Yes.

By Judge HORTON: I have a few additional questions that I forgot to ask, if you will pardon me.

Questions by Judge HORTON:

Q. Do you know about the quarantine grounds?

A. Yes, sir.

Q. In what way are they operated—different from the other yards, I mean?

A. They are operated just the same as the other yards, except that it requires a separate force to operate them, inasmuch as the cattle are not allowed to come from those pens to the native pens or *vice versa*, and the result is that the stock yards company is at the expense practically of maintaining two sets of yards while the main yards would have the capacity, and help employed in the main yards could take care practically of all the quarantine business if it could come in with the other stock.

Q. State about taking care of and keeping them separate from those in the other grounds.

A. They just simply have to be kept entirely separate—operated separately.

Q. How about cleaning, etc.?

A. Just the same as the other; have to be kept clean.

Q. Any disinfectants have to be furnished or used?

A. Not on the quarantine side, but if by accident any infections cattle should get into a native pen, then we have to clean that pen by washing and disinfecting it and the alleys and chutes
487 from which those cattle moved.

Q. Does that occasionally occur?

A. It occurs, but very rarely.

Q. How are these cattle taken from the quarantine ground to any other place?

A. They are taken out and shipped in cars—all that go for foreign shipment—and those that go to the slaughtering establishments in Kansas City are driven over special alleys for their exclusive use.

Q. State whether or not any other cattle are allowed to go out into any of these alleys in these yards except infected cattle.

A. None for sale. Of course, the native cattle going over to Swift's and Schwarzschild & Sulzberger's plants, drive through these yards because it is the nearest way and there is no risk, inasmuch as these cattle are going to immediate slaughter and could not contract any disease before they would be killed.

Q. Why do you have to take extra precautions concerning these cattle?

A. We are compelled to do so under the regulations of the United States Department of Agriculture.

Q. State whether or not any United States officer is here to give any directions.

A. There is.

Q. What is his name?

A. His name is Albert Dean, and he is inspector of the transportation of live stock in the United States. This is the headquarters of the department or subdepartment, rather.

And in answer to cross-interrogatories propounded to him by Mr. Boyle, attorney general, the witness testified as follows, to wit:

Q. You are an employé of the stock yards company, Mr. Child?
A. Yes, sir.
488 Q. Are you a stockholder in the company?
A. No, sir.
Q. How long have you been in the employ of this company?
A. A little less than twenty-six years.
Q. Were you with the company when it started in business here in Kansas City?
A. Yes, sir.
Q. What official position did you then hold?
A. Yardmaster.
Q. What position do you now hold?
A. Assistant general manager.
Q. Who was then the assistant general manager?
A. There was no such office at that time. The yards were very small, and there was only a superintendent and yardmaster in active charge of the yards.
Q. How many acres did they have in Kansas in 1871, when they were established?
A. My impression is they had about forty acres, of which about ten or twelve were built up at the time.
Q. Do you remember how many pens they had at that time?
A. No, sir; I couldn't say that.
Q. You could ascertain it by your books, no doubt?
A. That would be difficult.
Q. Do you know how many employés they had then?
A. I bossed two men at first.
Q. You had two men under your charge as yardmaster of the Kansas City stock yards?
A. Yes, sir.
Q. It was a corporation, was it, at that time?
A. Yes, sir.
Q. Kansas City was quite a small burg at that time compared to what it is now?
A. Yes, sir; undoubtedly smaller than it is now.
Q. When was the union depot built here in Missouri? Do you remember, Mr. Child?
A. The present depot?
Q. Yes.
A. No; I don't.
489 Q. Was it built before the stock yards came here or since?
A. No, indeed; since.
Q. What roads ran into this general point here—Kansas City, Missouri—in 1871?
A. May I refer to our annual report?
Q. Yes.
A. I mentioned just two roads. I would like to know if I am correct. There was the Hannibal & St. Joe; the Wabash, at that

time the North Missouri; the Missouri Pacific, Kansas Pacific, Kansas City, Fort Scott & Gulf, and the Kansas City, St. Joe & Council Bluffs, which is another division of the Hannibal & St. Joe. That is all.

Q. Since then other trunk lines have concentrated here in this general point?

A. Yes, sir.

Q. Kansas City, Missouri, which is directly contiguous to the territory where the stock yards are located, has become a great shipping point, has it not, for all classes of commerce?

A. Yes, sir.

Q. Do you know what the capital stock of your company was when the yards were located here?

By Mr. HITE: I object to the question as improper cross-examination. Not a word was asked him on direct examination with reference to capital stock.

By the MASTER: I hardly think it is admissable. There has been no effort made as yet to show the value of the property. As the case now stands, the rates of the legislature are reasonable, and it devolves on the other side to rebut that presumption.

Whereupon the master sustained the objection.

Q. At the time you located here the condition of the country where you located was rough, wooded territory?

A. Yes, sir.

Q. And you bought just the raw land?

A. Yes, sir.

490 Q. There were not very many improvements in that vicinity at that time?

A. No, sir.

Q. Since then you have added to this property, so that now you have in the neighborhood of 168 acres of land owned and leased?

A. Yes, sir.

Q. Most of this 168 acres—in fact, the greater portion of it—you own?

A. Yes, sir.

Q. With the exception of two or three small strips that you lease from the Missouri Pacific and Union Pacific?

A. Yes, sir.

Q. On long-time leases?

A. Yes. One of them is a long-time lease; the others are small, and they are from year to year.

Q. What did the stock yards consist of when you first built them?

A. Of cattle pens for possibly 100 car-loads of stock, and a small frame office building.

Q. Did you have any exchange building then?

A. No, sir; we had, as I say, a small office building that represented the offices of the company.

Q. Were there any commission men occupying offices in that building?

A. Not the first year; the second year a few of them came, and the business gradually grew.

Q. What did you charge for yardage, feed, etc., then?

A. We charged the same for feed as now, and the same for yardage, with the exception of the question of cattle yardage; we started out, as I understood it, with a twenty-cents yardage charge, with the idea of drawing business here by the lower rate of yardage.

Q. How long did you maintain the twenty-cent yardage rate?

A. Until April 10, 1891.

Q. Was your yardage for sheep, hogs, and calves the same as now?

A. Yes.

Q. Which is the greater source of revenue from the stock yards of these different classes of animals—cattle, hogs, or sheep?

491 A. Cattle pay twenty-five cents per head; hogs only eight, and sheep five.

Q. In 1890 what was the extent of your stock yards—that is, how much land had you added to your original forty acres, we will say?

A. I could not answer that closely, because I have no data with me, but I presume we have added about twenty-five or thirty acres since.

Q. I do not mean that. I mean how many acres had you added from 1871 up to 1890 after you had first made your original purchase of forty acres of which you only occupied six or seven acres.

A. Ten or twelve, I said.

Q. How many acres did you add to that original forty up to 1890?

A That would have to be purely a guess.

Q. Give me your best judgment.

A. It would be somewheres about one hundred acres.

Q. Then as a matter of fact you added the greater portion of your territory between 1871 and 1890?

A. Yes, sir.

Q. Since then you have added in the neighborhood of twenty-five or so acres?

A. Yes, sir.

Q. What buildings did you have in 1890?

A. Well, that would be hard to answer intelligently.

Q. I will ask you this: Did you have your exchange building at that time?

A. We had the stock-exchange building, but not in its present size. It has been a growth itself.

Q. You had your stock-exchange building, but it has been increased since?

A. Yes; we built it in 1886.

Q. Did you have these quarantine yards in 1890?

A. Yes, sir.

Q. Do you remember how many chutes you had in 1890?

A. Yes.

Q. Had you a considerable number?

A. Possibly three hundred.

Q. You have four hundred and eleven now, I believe?

A. Yes, sir.

492 Q. Well, your business had considerable development from 1871 to 1890, had it not, Mr. Child?

A. Yes, sir.

Q. Had these packing houses located here then, any of them?

A. Yes; they were here; quite a number of them in various stages of development; they were like the stock yards.

Q. A process of growth?

A. Yes, sir.

Q. They were here buying cattle at your market?

A. Yes, sir; some of them.

Q. This all had been done on the charge for yardage of twenty cents for cattle, and the same yardage for sheep, hogs, and calves, and the same prices for hay and corn as now?

A. Yes, sir.

Q. As I recollect your answer, you say you made this reduced charge for cattle with the expectation that it would give you increased business over other stock yards; that was the first idea?

A. Yes, sir.

Q. Your stock yards did develop very rapidly, did they not?

A. Yes, sir.

Q. When did you raise the price on cattle?

A. April, 1891.

Q. Calling your attention to this plat of the stock yards, Exhibit C, I will ask you to indicate to me where the original stock yards were located.

A. I can point it out; I don't know whether I can describe it. Right through there.

Q. The place where you indicate is now the north end of the stock yards?

A. Yes, sir; east and west of the State line, between the State line and the river.

Q. In what direction was it that the city built up around the stock yards?

A. To the east of it.

Q. Your stock yards extended from that north line east and south?

A. East to the State line and south probably six or seven hundred feet.

493 Q. Now, what portion of the stock yards is there now located upon and occupying ground that had been built upon by business houses or dwellings and other structures that you afterwards bought? Just indicate that as clearly and distinctly as possible, Mr. Child.

A. One block of land originally bounded on the north by Fifteenth street, on the south by Sixteenth street, and lying between what was then State Line street and Bell street, and since that, four blocks lying between Twelfth and Sixteenth streets, and now fronting on Genesee street.

Q. When were these purchases made?

A. They have been made within a period of three or four years, I believe; we have gradually picked them up; that first block was picked up in 1886.

Q. That property then was covered with buildings?

A. Yes, sir.

Q. Were they business houses or residence property, Mr. Child?

A. Residence property.

Q. In 1886, you think, was the first?

A. That is my impression.

Q. What was the character of the buildings that occupied this ground?

A. They were homes; residences that probably cost from three or four hundred dollars up to four thousand dollars apiece.

Q. Brick buildings; large structures?

A. No; nearly all frame.

Q. How many four-thousand-dollar structures were there in this block?

A. I don't think there was more than one.

Q. You know there was one?

A. I wouldn't say as to that; it was about that; we never knew what those buildings cost; when we bought the property those buildings were simply given to anybody who would take them off; in other words, they were sold at auction at prices which averaged at the time less than it would have cost us to tear the buildings down and take them off.

Q. Was this a desirable residence portion of Kansas City?

A. No, sir.

Q. Where were the packing-houses in reference to this
494 tract—these residence portions that you bought up?

A. From a mile to a mile and a half west of north and a mile west.

Q. You bought this first block in 1886?

A. That is my impression; I would not be positive as to the year.

Q. The others you have bought since 1890?

A. We have bought them since 1890.

Q. What are these bridges over the river constructed of?

A. They are steel bridges or bridge, rather; there is only one.

Q. That was built when?

A. I could not say.

Q. Before 1890?

A. Yes, sir.

Q. You spoke of there being tunnels under certain portions of this yard. Who built those tunnels?

A. The stock yards company.

Q. And they own them?

A. Yes, sir.

Q. They were built for what purpose?

A. To drive stock through, under these railroad yards, from one

side of the yards to the other, from one part of the yards to the other.

Q. These tunnels were built for the convenience and greater efficiency of the yards?

A. Yes, sir; as a necessity to the business.

Q. As a necessity to your business?

A. We had to have connection between one side of the yards and the other.

Q. You did it then to accommodate yourselves in the conduct of your business, did you not?

A. Yes; because in accommodating ourselves we accommodated the owners of stock, and did that much more business.

Q. In improving the yards in that way you were making them better, and drawing more business all the time?

A. All these betterments beyond a certain point were for the purpose of increasing the business of the yards.

495 Q. And thus increasing your profits?

A. Yes, sir.

Q. There are certain pens you spoke of as being set aside for the packing-houses?

A. Yes, sir.

Q. How many of these are there so set aside?

A. There is probably fifteen or twenty pens; four or five pens for each of the packing-houses.

Q. Those are large pens, are they?

A. Various sizes; different sizes.

Q. Some of them larger than the ordinary?

A. Yes, sir. They want different sizes of pens.

Q. For whose benefit were they constructed and now operated?

A. They are just a part of the yards that we have to have; we have to have pens for the purpose; they are not built expressly, say, for Armour, but when Armour wants a pen we pick out what is the best for all interests concerned and assign it to him, and when the other packers want pens we do the same.

Q. That is to say, when he buys stock that stock is put in that pen?

A. Bunched in that pen; he will buy, perhaps, a hundred lots of stock of from two or three to a car-load and keep turning them into that pen, and as they get a few hundred together his drivers come and take them over to his house.

Q. Are these pens used by the shippers to yard their cattle or corral their cattle before they sell them to anybody else?

A. These particular pens?

Q. Yes.

A. No; because they are set aside for these houses, but if at any time we have so much business in the yards that we would not have as good pens for the use of the shipper Armour would have to give up these pens and turn them over to the shippers and take his stock direct from the scales to his house.

Q. But as a general thing these pens are reserved for his special benefit?

A. Yes, sir.

496 Q. Does he pay anything for that special privilege?

A. Nothing; no buyers pay anything except for feed, and sellers pay nothing except for feed and yardage.

Q. These packing-houses, of course, don't buy any feed from you people?

A. Yes; more or less; when they have made a heavy day's buying and haven't got room in their own yards at the house for all they have bought overnight, they leave them in our yards and feed them with our feed at the regulation prices.

Q. You charge them the same as you do anybody else?

A. Just the same.

Q. That becomes a source of revenue to the stock yards company?

A. When they feed it is that much revenue, but it is a very small item.

Q. They do not use very much water, then?

A. No; not very much, because the stock has been stuffed full of water just before they buy, and they don't want any more until they take them out of the yards, but it is free to them for the stock while it is in the yards.

Q. Who drives the cattle from these yards to the packing-houses?

A. The employés of the packing-house company.

Q. That is to say, when the cattle are bought by these packing companies and are put into these pens, they are then considered as delivered to the packing company?

A. Not until they get out of our yards; we have to count them out and guarantee the number.

Q. Why were these yards located at Kansas City; do you know, Mr. Child?

A. No.

Q. Where had you worked prior to coming here?

A. The preceding two years before I commenced here I lived in Kansas City; my uncle was speculating in cattle and I was shipping them to Chicago.

497 Q. Who employed you to work in these yards?

A. The first superintendent, Jerome B. Smith.

Q. You don't know why these yards were located here?

A. I had nothing to do with the location of them.

Q. Now, referring to these four hundred and eleven chutes; that is where the railroads unload the cattle?

A. Yes, sir.

Q. Who unloads the cattle from the cars?

A. The stock-yards employés.

Q. Is there any charge made by the stock yards company for that work to the railroads?

A. Yes, sir; fifty cents a car.

Q. That is another source of revenue, besides?

By Judge HORTON: For all cars?

A. Fifty cents a car for unloading and fifty cents a car for load-

ing; that is charged to the railroad company; the owner of the stock has nothing at all to do with it; it is no tax on him.

Q. But you get that revenue, do you not?

A. Yes, sir.

Q. Then the yardage and feed is not the only source of revenue that the stock yards company has?

A. No, sir.

Q. The commission men have helpers around the stock yards, do they not?

A. Yes, sir.

Q. About how many are there employed?

A. Oh, I expect a couple of hundred.

Q. What is their business?

A. To assist the commission men in handling the stock that he has for sale, in the way of sorting, watering, ordering feed, and taking to the scales, and so on.

Q. I understood you that the stock-yards employés did that work entirely.

A. No; I did not say that; we take the stock from the scales; the commission man brings it to the sales.

Q. Who pays these employés of the commission men?

A. The commission men.

498 Q. They have charge of them in taking them from the chutes to the stock-yards pens?

A. From the pens to the scales. A good share of the stock is taken from the chutes to the pens by the commission men, but that does not save the stock yards company any labor, from the fact that there is no obligation whatever upon the part of the commission men to take that stock to the pens, and the stock yards company had to maintain a force sufficient to take all that stock to the pens in case the commission man does not happen to be there to take it himself.

Q. But, as a matter of fact, a large percentage of the stock that comes in is handled by helpers of the commission men from the chutes to the pens; is not that true?

A. Yes, sir.

Q. And the stock yards company collects fifty cents a car for that work?

A. From the railroad company.

Q. From the railroad company?

A. Yes, sir—no; not for the work, but for the unloading.

Q. Who unloads?

A. The stock yards company; the commission men do not unload them; the stock yards company unloads them; it is just simply taking them from the chutes to the pens that the commission man comes in and volunteers to do the work occasionally.

Q. What do they do in unloading a car-load of cattle?

A. Open the car door, set the chute gates across the platform, and put in the bridge between the car and the platform, then drive and scare the stock out of the car down in the chute.

Q. How many men does it take to do that?

A. It requires two or three men at each car.

Q. How many cars a day do you have coming in there, on an average?

A. About 350, I guess, last year.

Q. Now, give me the classes of laborers that you have over
499 there—the names of them—employed directly by the stock yards company.

A. We have quite a string of them. Do you want me to answer that or will you let it go for Mr. Rust; he has direct charge of that matter?

Q. That is satisfactory. What becomes of the dead animals that die by exhaustion or disease or otherwise in your stock yards?

A. They are taken out of the cars by our employés and by common consent they are gathered up by a company known as the Kansas Dessic-ating and Refining Company, which is in the business and has a plant for utilizing such offal.

Q. The Kansas City Stock Yards Company has nothing to do with that plant?

A. No, sir.

Q. Is that a corporation—that plant?

A. Yes, sir; there is quite a misapprehension in regard to that, and that is that it is an exclusive privilege or monopoly; there is nothing that I know of in any law anywhere against anybody coming in and buying any of that offal who chooses to do so. Some years ago there was a city ordinance, which rather tended to restrict it, against hauling it through the streets, but that is a dead letter.

Q. You spoke about dipping sheep. What is the name of the company that does that?

A. No company whatever; the plant is owned by the stock yards company and furnished free to parties whom the law designates have to dip their sheep.

Q. Then you do not make any charge whatever of any kind for that?

A. None whatever; the owner buys whatever dip or preparation he chooses that meets the approval of the Government inspector, hires his own men, and does all the work, just simply using our appliances.

Q. You furnish hot water?

500 A. We furnish a man and the fuel to heat the water; we do that simply, not from charity, but simply as a precautionary measure against fire; we have our man in charge of the fire; it would be unsafe to allow anybody to do it.

Q. That fire and boiler is a separate and distinct apparatus by itself?

A. Yes, sir; right near the sheds, where carelessness may be dangerous.

Q. That machine does not supply water to any other portion of the stock yards?

A. No; it is just a couple of tanks with a furnace. We furnish the water free and heat it to suit this Government inspector.

Q. So that the man who dips the sheep pays the cost, with the

exception of your furnishing the water and the man that heats the water?

A. We make no revenue whatever out of it, in any shape or form.

Q. You have a large building over there known as the Stock Yards Exchange building, in which are located the commission men, railroad offices, and banks?

A. Yes, sir.

Q. You rent those offices to the different persons who occupy them?

A. Yes, sir.

Q. That is another source of revenue to your company?

A. Slightly.

Q. How many commissionmen are located in that building?

A. About ninety firms.

Q. How many banks?

A. One.

Q. How many railroad companies?

A. Six or seven.

Q. What revenue is derived from that building?

A. About six per cent.

Q. What does it amount to in dollars and cents?

A. I could not say. I know in a general way; that is all.

Q. Who knows that?

501 A. That would be in Mr. Richardson's department. He is secretary and treasurer.

Q. You don't know of your own knowledge what the revenue from that building is?

A. No; although I rent all the offices. I know what the rent on each particular office is, but I don't know what the aggregate is. I simply make the contract, and after that it is all done through his office.

Q. You have in your books some memorandum by which you can ascertain?

A. Mr. Richardson has.

Q. You rent the offices?

A. I simply have charge. When I rent an office I just mark the man's name on the office. There is no variation in the prices. That is all I have to do with it.

Q. You say you are not familiar with the exact number of helpers in the yards; this other gentleman will know better?

A. Yes, sir.

Q. You are familiar with the number of clerks of the stock yards company, are you?

A. In a general way. That would be in Mr. Richardson's department.

Q. Whatare the head officials of your company known as?

A. Mr. Morse is vice-president and general manager, Mr. Richardson is secretary and treasurer, I am assistant general manager, and Mr. Rust is general superintendent.

Q. What is the name of your general manager?

A. The general manager is Colonel C. F. Morse—vice-presid and general manager.

Q. Who is president?

A. He is located in Boston. Mr. Morse is the active manage the corporation.

Q. Are you familiar with the salaries of these different office

A. I know my own.

By Judge HORTON: We will give you the salaries and the na of all the officers when Colonel Morse comes in.

502 Q. That will be all right. I wish you would state to special master if the revenue from feeding and yardage, the revenue from the stock-exchange building and from the lo ing and unloading of cars, is the only revenue that the Kansas C Stock Yards Company derives from the operation of its busines

A. No; it has a horse and mule market business also that bri in some revenue.

Q. What is the difference between the horse and mule market its method of operation, and this other business?

A. They have to be handled in very different ways.

Q. That is located entirely in Missouri?

A. That is located entirely in Missouri.

Q. What other revenue besides this I have spoken of?

A. I don't think of anything else.

Q. Is that all? You ought to know, Mr. Child, if anybody.

A. That is all except little trifles that cut no figure; in some corners we have got nominal leases—a dollar a month—someb has got a squatter's house on it to hold the title; nothing that any figure at all except what I have mentioned.

Q. Who makes the tax returns for your company?

A. Mr. Richardson.

Q. Referring to these railroad tracks, do you own any rolli stock?

A. Nothing except eight or ten cars that are idle.

Q. How long since they have been used?

A. Four or five years.

Q. Now, these tracks were built, as I understood your direct amination, so that the stock-yards people could with greater sp facilitate their business?

A. Yes, sir.

Q. You have absolute control over those tracks?

A. Yes, sir.

Q. So that if a car is located at any place you can have it mo to any other place at your will?

A. Yes, sir.

503 Q. That was done, if I understood you, so that less r would be necessary to be used for track purposes?

A. Yes, sir.

Q. You put in those tracks with that view, so that you co better control that business?

A. Yes, sir; just the same as the other improvements; whate tended to facilitate the business was done.

Q. In facilitating the business, you were endeavoring to get business in order to increase your profits?

A. Yes, sir.

Q. Whatever benefits flow to the shipper by reason of these increased facilities go to the stock-yards people as well?

A. When it results in bringing in more shippers, the stock yards company receives its increase, and the more benefit there are to the shipper the more shippers come.

Q. Now, referring to this through shipment of cattle, where you say there is no yardage charged. A great number of cattle are shipped through and stopped at Kansas City stock yards in the course of a year. That is true, is it not, just shipped through and stopped in transit?

A. Not a very great number; about four and one-half per cent. of our receipts.

Q. Now, what percentage of the cattle that are shipped through stop here and are sold and handled by the Kansas City Stock Yards Company, if you apprehend my question, Mr. Child?

A. I think you mean this, as I take you: What percentage of the cattle that are billed through stop and are sold here.

Q. Yes.

A. On that I could only make the wildest guess, but I would suppose, taking the year around, thirty per cent. of the cattle that come to the yards are billed through, and during certain seasons it will be fifty per cent. Fifty per cent. of those which stop at Kansas City are billed through.

Q. Why is that so?

504 A. The railroads make concessions to the long haul and give rather a better rate on stock billed through.

Q. So it is for the purpose of getting an advantage in rates?

A. Frequently that.

Q. Shippers bill through rather than bill to this specific point?

A. But if the stock sells in Kansas City to a local slaughterer the stock pays the local rate just the same as if it was billed right straight here. If it is billed through the shipper gets the benefit of the rates.

Q. What did it cost to put in this riprap, as I understood it, along the river; is that in the estimate?

A. Yes, sir; I would simply quote these figures and say they are correct. $74,500 is the estimate lately made. I will explain that. We were forced to make an estimate from the fact that our gradual growth has reclaimed—forced back—the river, and we have got at a cost of fifty thousand dollars of this kind of work buried in the land that has overreached it and gone out, and that we make no account of, because, I presume, Mr. Morse would claim the valuation on that land as it is.

Q. When did you put in your vitrified brick?

A. Commenced that about three years ago.

Q. How long will they last?

A. We don't know; we hope fifteen or eighteen years.

Q. Did you make an affidavit as to the expense of the stock yards company last year?

A. As to what they were?

Q. Yes.

A. Yes.

Q. You didn't include in that affidavit any of the improvements that were made, did you?

A. Yes; quite a number of them.

Q. What character of improvements?

A. Buildings, fences, etc.

Q. What kind of buildings?

A. This new sheep-house and the new hog-house on the north side.

Q. How long will they last?

505 A. Possibly ten or twelve years, with about ten per cent. each year for renewals and repairs.

Q. What is under your vitrified brick as a foundation?

A. In the alleys it is four inches of concrete, in the pens it is six inches of cinders, and under each of them a two-inch course of sand.

Q. You used a little bad judgment in investing sixty or seventy thousand dollars in stone early in your experience?

A. Yes, sir; it did not prove to be a success.

Q. Did you figure that in as an item of expense?

A. No, sir; not at all; no more than I have this riprap where it is buried. It is only what is actually in use that I have figured. I have made no mention or thought of anything that is gone any more than the plank that is rotted and gone.

Q. What kind of books do you keep in your office, Mr. Child?

A. Practically none at all. Mr. Richardson is in charge of all the financial records and the yardmaster's office, of which Mr. Rust is directly in charge, has all the books of record of the receipt of the stock.

Q. Do you remember how many miles of track there are in Missouri?

A. No; I don't. I have no data here on it. I think the amount of all the tracks, without saying anything about the States, is 4,700 miles altogether.

Q. That is not used very much now?

A. Yes; used all the time. You mean just what is in Missouri?

Q. Yes.

A. Not very extensively. It is used on big days.

Q. They would not be considered as valuable as the Kansas tracks?

A. Every bit, because we have to have them. We have to be in position so that we can never be the cause of delays in handling stock.

506 Q. You don't make very much revenue out of these tracks in Missouri?

A. Don't make any at all out of any of them.

Q. Yes; you do, indirectly. You have some sheep pens over there which have been abandoned?

A. No, sir; they have been changed into hog pens; we need more hog room.

Q. You say this is a hog pen?

A. Yes; all we had to do was to take out the hay racks.

Q. Have the packing companies any tunnels leading to the stock yards?

A. No, sir; they have viaducts in one or two places up to the stock-yard line, and it is continued through the stock-yard property in the ownership of the stock yards company.

Q. They built them themselves?

A. In other words, we built up to the limit of our property and they continued it as far as necessary to their business over private rights of way.

Q. These stock yards, being located where they are, are of very great advantage to the packing companies, are they not?

A. Yes, sir; they built adjacent to it, because it is to their advantage to be close to it; just as close as they can get. The shortest drive they have with their stock the more advantage it is to them. The stock yards were built first and they located themselves as best they could.

Q. What percentage of the cattle that is shipped to these yards do these packing companies buy?

A. About one-half.

Q. How many cars a day do you ship out to foreign points?

A. Considerably over one hundred cars a day; very largely to the country for feeding.

Q. You get fifty cents a car for those?

A. Yes, sir.

Q. If you take in three hundred and fifty cars and ship out one hundred and seventy-five cars——

A. (Interrupting.) One hundred cars.

507 Q. It makes a revenue of two hundred and twenty-five dollars a day from that source alone, does it not?

A. Yes, sir.

Q. Now, do you derive any revenue from the dockage of hogs?

A. The stock yards company has no interest in that whatever; no more than as its effects divert business to or from the yards. The stock yards company has nothing whatever to do with the price of stock; that is between the buyer and seller.

Q. Who does the docking of hogs?

A. The employés or, rather, inspectors employed by the live-stock exchange, which is an association of the buyers and sellers, and it was adopted as the most equitable manner of securing correct dock, since the inspectors have no interest whatever in the number of pounds taken out; but it was a fight always between the buyer and seller.

Q. Now, referring to this water question, which seems to be a big point, of course, these packing companies who buy half the cattle that are shipped in here and are right on the ground with their

buyers all the time, they know, don't they, that these cattle are watered in the manner that they are?

A. Yes, sir.

Q. You estimate that these cattle by the increase of their weight—that the seller thereby derives a large profit over and above what he would otherwise derive?

A. Yes, sir.

Q. You don't give the buyer, then, any credit for his information of the manner in which the weight of the cattle has been increased?

A. He cannot take advantage of it. He is in such sharp competition with other buyers that it would appear to be pretty good *prima facie* evidence that he has no control over it from the fact that I presume there is not one car in twenty-five thousand that is sold at the car weights. If the buyers thought there was any advantage in avoiding that they would try to do so, but, as I said before, I think the competition is so sharp that it prevents anything of the kind. They simply have to accept the situation as they
508 find it.

Q. Couldn't they have just as sharp competition by buying them by car weights as in the other way?

A. The facts are that they do not.

Q. Do you undertake to say that this fact—that this watering business has nothing to do with the market prices which they pay for these cattle; or, in other words, you don't know what fixes the market price in their own minds?

A. No, sir; I just simply state the facts as they are.

Q. You have nothing to do with the private contract between the buyer and the seller?

A. Absolutely nothing.

Q. So that the motives that prompt the seller to give his cattle lots of water or the reasons why the buyer would buy them under those circumstances you have no concern with?

A. None whatever.

Q. You charge so much for yardage and for watering these cattle and giving them hay, etc.?

A. We have two charges—yardage in case they are sold, and feed when it is ordered, which covers all our work and expense.

Q. In this general service you supply water?

A. Yes, sir.

Q. The fact that some of these cattle may drink more water than others, does that enter into your charge in any way?

A. Not at all.

Q. That is the extent of your observation of the way things go?

A. Yes, sir.

Q. The shippers get the best of the buyers right along?

A. It is a good speculation.

Q. What is the reason that you do not make a charge for the yardage of these other cattle, Mr. Child?

A. Because we do not feel that we have given them a
509 service which warrants it, in not giving them a market; the yardage largely represents the market, and the expense of

eighing and extra work, that is contingent on the cattle being sold. When they come in simply for rest they go into a single pen and stay there all day and are shipped out from that pen.

Q. You say that a dollar per car-load is the amount of feed that cattle consume?

A. That is the average feed.

Q. How do you get that average, Mr. Child?

A. By taking the number of pounds fed and dividing it by the number of cars received. I guess I had better explain that—our feeding. We get that by dividing the amount of hay fed—not only the hay fed to cattle received from the train, but the hay fed for speculators; we have got speculators there—probably one hundred speculators—who carry over from day to day from two to seven thousand—six or seven thousand head of cattle in extreme situations, ordinarily from two to three thousand. These cattle, of course, are eating a great amount of hay also, but I haven't taken that into consideration in figuring up what we feed for the man who pays us for the market.

Q. You don't know what your revenue from your horse market is, do you?

A. No, sir; I couldn't give you the figures on that.

Q. What charges do you make for feeding horses and mules?

A. Twenty-five cents a day for mules and fifty cents a day for horses.

Q. What do you charge for feeding them?

A. That covers the feed, stable, and everything—three feeds; they are not fat, to be weighed as cattle and hogs are.

Q. How many tons of hay did you use last year?

A. 11,400, I believe.

Q. Tons?

A. Yes, sir; nearly 11,500 tons.

510 Q. How much did you sell that for per ton?

A. Twenty dollars.

Q. How much did it cost you?

A. For the hay alone, about seven dollars a ton.

Q. Where did you buy it?

A. We contracted three-fourths of it of different men in different parts of the State and bought about one-fourth of it on the market.

Q. Do you mean to say you paid seven dollars a ton for the hay you contracted for?

A. Yes, sir; we had to do it because we use such an enormous amount of it, and not choice hay, but gilt-edged hay. We have to have a strictly fancy brand of hay. Charging the price we do, there is no excuse for not giving the best, and that is in such limited quantities on the market that no contractor will take the chances. You see the contract has to be made before the grass is grown, and he has got to take that into account, and those are the prices we have to pay in competitive bidding. Some bids run up to nine dollars a ton, but we contracted seven or eight thousand tons at seven dollars a ton. We have to do that because of the danger of being cornered. We are different from a feed store. A

feed store may or may not have it, but we have got to have it, whether we can get it or not, so to speak; so that we provide it at whatever cost. It is necessary to have it, and we make these contracts in order to secure it, and, in addition to that expense, we have to store about two thousand tons each year, holding it all through the year as a reserve against such things as washouts on railroads that would keep our cars from getting in. We have the cost of maintainance of these barns and insurance on the hay and all that to add to it, hauling it to the barns, which brings that two thousand tons up to eight dollars a ton.

Q. Who keeps the books where these facts can be discovered?

A. Of the contracts?

511 Q. Of the prices which you pay.

A. Mr. Richardson.

Q. Does he keep the books where the prices which are paid for labor is shown?

A. Yes; Mr. Rust here, in that respect, could give you a list of the employés.

Q. How many tons do you use?

A. About 11,500.

Q. At twenty dollars a ton would make something over two hundred thousand dollars revenue you receive?

A. Yes, sir.

Q. You sell that hay for twenty dollars a ton, don't you?

A. Yes, sir; and sell all the labor with it, too.

And in answsr to redirect interrogatories propounded to him by A. H. Horton, solicitor for the complainants, the witness testified as follows, to wit:

Q. Mr. Child, we come right back to this question he has just asked you. He said you sold hay at twenty dollars a ton. Is that twenty dollars a ton simply for the hay?

A. No, sir; that is for all the expense the stock yards company is put to in addition to the cost of the hay.

Q. How many separate deliveries are made of one ton of hay?

A. Well, it averages about twenty.

Q. How much force does it take to make these deliveries?

A. We have eighteen wagons with two men each in that business, just as fast as they work, three or four hours in the morning.

Q. You spoke about insurance on hay. What did you mean by that?

A. That is the hay I spoke of that we keep stored against emergencies.

Q. How much hay no you keep stored all the time?

A. About two thousand tons.

Q. State whether it would be practicable in the operation of your yards to go upon the markets here daily and buy hay.

A. It could not be done at all. We couldn't get the hay.

512 The supply is too irregular.

Q. You say that sometimes you paid seven dollars and sometimes eight dollars?

By Mr. BOYLE: No; he didn't say that.

Q. What do you say about buying hay per ton?

A. I said we paid seven dollars on these contracts for about three-fourths of our hay, and one-fourth we bought on the market; the eight-dollar figure came on this stored hay; with the insurance, buildings, etc., hauling to the yards, represents a dollar a ton.

Q. How high did you use to pay for hay?

A. We have paid as high—for months or weeks?

Q. Yes.

A. We have paid for months as high as fifteen dollars a ton, and at one time we paid twenty-four dollars a ton and sold it for twenty. We have never raised the price of hay when the market went up. Almost always in the winter season the market ranges from ten to fifteen dollars a ton. The last two years it has been exceptionally low; it is about eight dollars now.

Q. Counsel spoke about you at one time having twenty cents yardage, and afterwards that you raised it, in 1891; just tell the reason you raised it. What was the reason?

A. The reason the yardage was raised was that, in the first place, our solicitors whom we sent into competitive territory to get business from opposition yards, when they would make the plea that our yardage was lower, five cents lower than at the other markets, they were met with the remark, "You must have a——"

By Mr. BOYLE: Wait a moment.

By Judge HORTON: You need not go on and state what others said; state your own reason.

A. This statement——

Q. You cannot tell what some one else told you; give a statement of what you know about it.

513 A. It was telling against us in business, the impression being that we had not as valuable a market or that we would charge as much yardage as the other markets. That was one reason, and, finding it was not drawing business to us through the saving of five cents per head, the additional yardage was added and the increase of revenue taken to give the yards better facilities and better appointments than the opposition yards and thereby to increase our business and to increase the volume of our business.

Q. After the yardage was increased from twenty to twenty-five cents, state whether or not business increased or decreased.

A. There was a steady increase so far as general conditions are concerned. We couldn't see that the yardage had anything to do with it; it was a very rapid increase. The failure of crops made temporary decreases one or two years.

Q. He spoke about some property down there that had some buildings on it of some kind or character. State whether or not in the operation of the yards it was necessary to extend the property in that direction.

A. It was necessary to extend the yards, and that was the only direction in which they could be extended. We had to have more

room. More business was in sight prospectively than we had room for, and we had to be prepared for it.

Q. State whether or not the buildings that were referred to, that were on the grounds, in any way in their sales furnished any large revenue to the company or not.

A. None at all; simply offset the expense of tearing them down and throwing them away.

Q. Do you know of your own knowledge—if you don't you need not answer—of the difficulty of the company in getting property extending around it; whether it was easy or hard?

514 A. My only answer would be that one piece of property that Mr. Richardson and I together bought for the stock yards company we paid one thousand dollars a front foot for and before the idea was advanced or known that the stock yards company wanted land was valued at seventy-five to one hundred dollars a foot.

Q. Has the company, so far as you know, ever bought any property except what it has to have?

A. No, sir; no property whatever except what was necessary for stock-yards purposes.

Q. They spoke about the tunnels which run under the railroads. You answered they were to facilitate the business of the yards. State in what way it also furnishes additional facilities to the cattle or stock that is sent in there by the shippers or owners.

A. It furnishes facilities for the commission man or the owner to move the stock to any part of the yards, irrespective of which side it is received and to which, in his estimation, it is the greatest advantage to him in selling to have them.

Q. State, then, whether or not it is a convenience to the shipper or person handling the stock, as well as to the company.

A. It is a direct convenience and advantage to the shipper, inasmuch as without communication he would be practically shut out of the market.

Q. They asked about some packing-house pens. How much of the stock in those yards do the packing-house buy?

A. About one half of the cattle and three-fourths of the hogs; yes, four-fifths of the hogs.

Q. Does this give them additional opportunity to buy and take care of the stock in the yards?

A. Yes, sir; otherwise they would have to drive each animal or animals as they were weighed clear to the house without any chance of bunching them together.

Q. In the proper operation of these yards, state whether or

515 not the packers, the buyers, and the shipper are not all benefitted together.

A. Yes, sir; every convenience and accommodation that can be added to the business for any one interest is a direct or indirect benefit to all interests.

Q. You spoke about a fifty-cent charge connected with the unloading of stock.

A. Yes, sir.

Q. State what you do, in addition, for that fifty cents—what the company does.

A. For the railroad company?

Q. Yes; for the railroad company alone.

A. The stock yards company furnishes a corps of office men and accepts the responsibility for all the charges from the road delivering the stock.

By Mr. DANA: You mean freight charges?

A. The freight is charged directly to the stock yards company. The stock yards company collects it from the shipper when the stock is sold and remits in weekly settlements to the railroad companies, but if the stock is forwarded they furnish the bill to the receiving road, and the charges from the delivering road, in addition to the stock-yards charges, furnish this bill to the receiving road, collect it back of them, and pay it over to the road from which it was first received; in other words, act the same exactly for the railroad company as their own employés would do were they there to collect their charges at their freight-houses.

Q. Then this talk about fifty cents for unloading—it is not for unloading only?

A. No; that is for the entire railroad service, and also for furnishing this investment in railroad tracks; that all goes into the fifty cents; there is no charge for trackage.

Q. You make all these collections and return them?

A. Yes; act as agent between the two, the same as one
516 railroad connecting with another.

Q. Do you know whether any additional freight rate is charged by the railroad company for your doing this?

A. No, sir.

By Mr. DANA: It is absorbed by the railroad company?

A. Yes, sir.

Q. Is the cost in any way increased?

A. No, sir; it is not necessary from the railroad point of view that it should be, because the railroad company in receiving its freight is obligated to furnish a place to unload the stock free, and that railroad company could not unload its own stock. Each railroad company, since it has no employés to unload stock, could not pretend to do it at fifty cents a car, because its business is too irregular; but the stock yards company, by having it all concentrated, can do the work at that rate.

Q. Do you know how many men are connected with the department which makes these collections for the railroad companies, the clerical force?

A. Mr. Richardson can give you that better

Q. You spoke about two hundred men that the commission men had as helpers. I did not fully understand you to say in what way, if at all, they relieved the stock yards company.

A. Practically not at all.

Q. In that connection, tell the court in what short time during the day the necessity of prompt action and great force exists. What

are the hours of each day that you have to have your maximum number of men?

A. This work is all done in about four hours—from eight to twelve o'clock in the morning—and in order to do it in that time it is necessary to have a very large force of men for that work. If the work could be done continuously, one man handling one bunch of stock and then another, when he got through, we could do
517 the work during the day with probably half the men or less; but in the extra rush and speed it is necessary to have and maintain this large force of men. The commission men have their own helpers, and while they do a great deal of work, they do not relieve the company of any expense, inasmuch as the company must be prepared to do this work if the commission men do not, since there is no obligation upon them to do it. They do it for their own convenience.

Q. They asked you about dead animals. Does your stock yards company receive or use those dead animals?

A. Not at all.

Q. You spoke of Mr. Richardson. Is he a young man or an elderly man?

A. About my age. He is fifty years old yesterday.

Q. Who is his assistant?

A. Mr. Mitchner is his assistant.

Q. State whether or not he has general charge of the books, too.

A. Yes, sir.

Q. He is a younger man?

A. Yes, sir.

Q. Is he not, on account of his health, the active man?

A. Largely so.

Q. He spoke about some affidavit, about the expense of the work. I really didn't understand that. What was that; an affidavit filed somewhere?

By Mr. Boyle: I referred to the affidavits used in the trial of this case.

Q. I do not care about them.

Q. Speaking about some stone pavements. Who had charge at the time those stone pavements were put down there?

A. I did.

Q. State whether or not the best judgment that you people had was used in the case of that particular article of paving.

A. Yes, sir.

Q. Ultimately you found out there was something better?

A. We found it was a mistake and changed it to wooden plank.

518 Q. Then, after you got down the wooden plank, you changed it to something else?

A. Yes, sir; to vitrified brick.

And in answer to cross-interrogatories propounded to him by Mr. Dana, solicitor for the defendant The Kansas City Stock Yards Company, the witness testified as follows, to wit:

Q. You said something, Mr. Child, about fifty per cent. of the cattle at certain seasons of the year going through Kansas City.

A. No; you misunderstood me or I gave a wrong impression. Fifty per cent. of the cattle arriving at Kansas City during certain seasons of the year are billed through to Chicago for the sake of lower rate—by taking the long-haul rate—but of that fifty per cent. there is practically all of them sold here, and pay the local rate.

Q. That is, they are sold on the market here?

A. Yes, sir; and pay the local rate, if bought by the local slaughterer.

Q. You mean the local freight rate?

A. Yes, sir.

Q. Let me ask you, then, do these cattle that are sold here under those circumstances pay the yardage charge?

A. Yes, sir.

Q. Do I understand you to say that 96—95½ % of all the cattle that come into the yards pay this yardage charge?

A. Yes, sir; that includes this fifty per cent.

Q. When the cattle are sold in the yard, no matter under what circumstances, the yardage charge is collected in all cases?

A. Yes, sir.

Q. So that any seller, no matter under what circumstances they are shipped—any one who sells his cattle in the yards—gets no advantage?

A. No, sir.

519 Q. He pays the same charge?

A. Yes, sir: it is only the question of freight that the owner may save by billing through; it is only a trifle.

Q. Give your best opinion as to the average value of cattle per head that were unloaded in the stock yards, or sold in the stock yards, rather, during the year 1896, fixing that value by the average selling price. Per head, I mean.

A. About forty dollars per head.

By Mr. DANA:

Q. My point is this: In this question of the reasonableness of the charges, the question of the liability imposed upon the company as bailee of this stock should be considered. I want to get some idea of the extent of the risks assumed by the company in its custody of each animal during a year, say. I take it there can be no question of the right of a bailee to charge something for the risk.

A. I will answer that question with an estimate that I made last year. The value of the stock handled was $103,402,298.

By Mr. DANA: And on that value of stock, I understand, the yardage was charged?

A. No; the yardage was charged upon about 95½ % of that
Q. It was twenty-five cents per head?
A. On the cattle?
Q. That is what I mean.
A. Yes, sir.
Q. You think the average selling price during the year was forty dollars per head?
A. Yes, sir.
Q. Now, state the same thing as to the average value of the hogs.
A. About eight dollars per head.
Q. What was the total—can you tell from this book?—of the hogs unloaded?
520 A. During the year 1896 the cattle, hogs, and sheep at the stock yards are bunched together here, $103,402,298.
Q. You haven't the value separately of the cattle, hogs, and sheep?
A. No, sir.
Q. Is it true that for whatever risk in law the stock yards company assumed by the custody of these animals during 1896 it got no other or rather received no other pay than twenty-five cents per head yardage for cattle, and how much for the hogs?
A. Eight cents for hogs and five cents for sheep.
Q. Is that true?
A. That is true. This revenue, with the profits on the feed, covered this insurance the same as it did all other help and expenses of the stock yards company.
Q. This includes all the other services you have rendered and which you have described, and covered also the risk, whatever it may have been, that you assumed in your bailment?
A. Yes, sir.
Q. Now, one question I would like to ask you about the tunnels, in the use of them. I understood you to say that the owners or their representatives, the commissionmen, may desire to have their animals removed to some particular location?
A. Yes, sir.
Q. That, I understood you to say, was because they had an idea that at a certain point they could sell better or show them better to the buyers. What is the reason of that?
A. I can explain that more clearly, I guess. The seller or commissionman will have, for instance, twenty cars of stock, from all the roads or from any of the roads, unloaded at any of these four hundred chutes. It is the interest of the seller to get the buyer before any other seller gets him in order to show the stock. The buyer is on the market, we will say, for a thousand cattle. If he has bought eight hundred of them, he is not quite as strong a buyer for the last two hundred as he was for the first two hundred, and for this reason it is important that the seller get to the buyer quick, to do
521 which his twenty cars are unloaded, and they are brought up to a certain block and yarded. He has got them all handy, and while his employés are bringing them up he gets the buyer, and he is right on the ground to show them to him all at

once, whereas if they were left to be yarded in their regular order in any pen that the stock yards company might think of the best advantage, he would have to take that buyer from one end of the yard to the other, and in the meantime he would lose not only minutes but hours.

Q. I will ask you to state whether or not, so far as you and your employés can do it, you move these animals to the pens or blocks that the owner or his representative desires them moved to, to facilitate the transaction which you have described.

A. We are perfectly willing to do that work, but we cannot do it practically at the time the seller wants it done. To illustrate again: Here is a train of cattle unloaded in this line of chutes, and the commissionman wants his cattle yarded here. We take our employés and start the unloading. If there were no other bunch of cattle to be considered, we could do it, but we cannot afford to hold all the other business of the train back until the trading is done; therefore we are forced to put the cattle in a pen and go back, whereas the commissionmen, represented by thirty or forty, up to ninety, firms, each of them can have a set of men, and, holding a car here and there, there is no delay except for themselves. They can stand it.

Q. What I was getting at is, so far as you can, with due regard to other shippers, you facilitate their business as much as possible?

A. Yes, sir; we do it as far as possible without detriment to other parties.

Q. Is it not a fact that the shipper or his representative directs the ultimate location in the yards in the great majority of
522 instances, the particular pen in which he wishes a particular lot of cattle?

A. That is a fact, through courtesy, of probably ninety-five per cent. of the receipts.

Q. So that it is practically true that the shipper or his representative directs whether his cattle when they reach the end of their journey in the pen where they are to be sold, whether they shall come into Kansas or into Missouri?

A. I do not catch exactly the thought, but I can straighten that out now, as I understand it. These commission firms, by common consent, have located themselves in certain places in the yards. They have just divided themselves up, just as a set of men would do in a small hotel that they had come —, in which they expected to stay. Each takes his room. There are certain firms that sell all of their cattle year in and year out in Missouri, and others sell all of theirs in Kansas, irrespective of where the cattle come from or where they were unloaded.

Q. To give an illustration: If Peters, a commissionman, should have a certain block of pens in Missouri, where he was in the habit of handling his stock, the ultimate destination of stock consigned to his care would be those pens in the yard?

A. Yes, sir.

Q. That is where the transit up to the time of the purchase ends, or the sale, rather?

A. That is where the sale is consummated; yes, sir.

And in answer to recross-interrogatories propounded to him by Mr. Boyle, attorney general, the witness testified as follows, to wit:

Q. Mr. Child, in making these additional purchases of land, that was done because of the increase of the business of the stock yards company, was it not? You had to have this new land for
523 the purpose of accom-odating your growing business?

A. Yes, sir.

Q. Have you any land that is not now occupied as stock yards?

A. We have a little yet on the west side.

Q. How much?

A. Seven or eight acres.

Q. That is all the land that is now unoccupied by the stock yards company in its daily business operations?

A. Well, there might be three or four acres more just in odd corners here and there not in actual use, but really practically all built over.

Q. Would it amount to twenty acres altogether?

A. No, sir; not to exceed fifteen, I should say.

Q. Where is this unoccupied land located?

A. In different parts of the yards.

Q. It is very valuable because you paid a thousand dollars a foot for some of it?

A. That is not a part of it. It is low lands, on the river front, river accretions, and this seven-acre tract that we spoke of is over in the quarantine yards. That, of course, is only available for the extension of the quarantine business. It is on the west side of the river and north of the quarantine grounds—a triangle in there.

Q. How many acres are there?

A. I think there is about seven acres.

Q. Where else is there unoccupied land?

A. Here is a frontage here. I don't know how much there is of it. It is low land, all under water now.

Q. Is that all embraced in this 160 acres?

A. Yes, sir.

Q. How much land is there there?

A. I guess about five acres.

Q. About one hundred acres was bought between 1871 and 1890 and the balance of it between that time and the present?

A. Yes, sir.

524 Q. You bought most of your land during the period that you were operating under the twenty-cent cattle charge?

A. Yes, sir.

Q. Your business increased largely during that time, did it?

A. Yes; and our expenses increased with it.

Q. Certainly; that is natural, but your business was not increasing as rapidly as you wanted it?

A. No; we never had enough yet.

Q. That is simply your ambition, to do as much business as it is possible to do?

A. Yes, sir.

Q. But you had increased your business from a little ten or twelve acre plot of land which your yard covered to one hundred and forty under a twenty-cent cattle charge?

A. Yes, sir.

Q. And you finally concluded that you were being handicapped by that charge?

A. Yes, sir.

Q. Then you didn't make a profit under that charge?

A. Yes, sir.

Q. You must make a largely increased profit under your twenty-five-cent charge?

A. No, because we increased our expenses in different directions, in more expensive construction, with this extra money; so we made nothing out of it.

Q. Didn't you increase the business?

A. Yes, sir.

Q. The more business you get don't you make more money?

A. No; not percentage, because our expenses keep up in proportion to our receipts. We have got to have more help, more land, and more construction.

Q. And the more business you get don't help you any, does it?

A. Yes; it helps us, because it maintains the prestige of the market and gives us our revenue.

Q. Do I understand you that if you do more business than you did last year you do not make more money?

A. Wouldn't make any larger profits.

525 Q. Would you not get a larger revenue?

A. No; we would get a larger gross revenue, but the expenses would be proportionately larger.

Q. You would have to be doing more business before you would take in more money, wouldn't you?

A. Yes, sir.

Q. Wouldn't you make more money with the larger income you get?

A. If our dividends were the same I do not see how it could be figured to make more.

Q. You make more money now than when you ran twelve-acre stock yards?

A. Yes; we have got more property.

Q. You are making more money on the money invested now than then, are you not?

A. Yes, sir.

Q. You couldn't charge twenty cents and make a profit?

A. Not and keep up the quality of the service and the appointments that we have.

Q. You do not want to testify to that as a fact, do you, Mr. Child?

A. Well, I think about the best thing for me to do would be to leave that question alone; that is not in my department; that should be left to Mr. Morse.

Q. What are your duties?

A. General supervision of the yards.

Q. What does that embrace?

A. It embraces the construction, maintenance, and general supervision of the business all through, with control of all the officers below me.

Q. Who directs you?

A. Colonel Morse, the general manager and vice-president.

Q. Who directs him?

A. The board of directors, I presume.

Q. He is the highest officer of the institution?

A. I should say, except our president, who is in Boston.

Q. What does he do?

A. You had better ask Colonel Morse those questions.

526 Q. You are the practical man over there, are you not?

A. Yes, sir; I am the immediate manager of the business.

Q. I presume you know more about the stock yards than Colonel Morse; I mean the actual stock yards?

A. Probably considerably more.

Q. Don't you know what this other man does—this man who lives in Boston?

A. I have nothing to do with him.

Q. Do you know how much he knows about the stock yards?

A. No.

Questions by Mr. LITTLE:

Q. I understood you to say that at certain seasons of the year fifty per cent. of this stock that comes into this yard is billed through to Chicago?

A. No; of cattle; not all the stock.

Q. Of that fifty per cent. that is billed through, what proportion do you say stops in the yards?

A. Oh, probably forty-five per cent. of it.

Q. And they stop because they get a market to suit them?

A. Yes, sir.

Q. Do the other fellows try for a market—those who go on?

A. Those who go on, as a rule, do not try at all. There is one point in regard to that: A certain percentage of the cattle that are shipped through to other points are feeding cattle; for instance, a man has gone down into Missouri and bought two trains of feeding cattle and ships them to Kansas.

Q. We often hear the expression, "I went to Kansas City and couldn't get a market, and went on to Chicago." What portion of these fellows are in this fix?

A. I don't know that I could answer that question. It would be a wild guess; it is a thing I know nothing of, except there is just such a percentage that does not sell. I do not know what their motive is or where they are headed for.

527 Q. There is a class of shippers who come on your market and cannot get prices that suit them and go on?

A. Yes; and when they come back they say they are awful sorry.

Q. When was the last time you saw one of them?

A. I haven't seen one of them, but I believe the men who tell me those things.

Witness excused.

By consent of all parties, the further taking of testimony before the master is now adjourned until Thursday morning at ten o'clock, at the Midland hotel, parlor S, Kansas City, Missouri.

528 HARRY P. CHILD, a witness heretofore duly sworn, in answer to interrogatories propounded to him by Mr. Boyle, attorney general, testified as follows, to wit:

Q. I requested you the other day to take substituted Exhibit D and mark on it, in my absence, that portion of the improvements now located on the stock yard company's real estate and used exclusively for the horse and mule business. Have you done so?

A. I have.

Q. I will call your attention to the items which I notice you have marked.

A. I have marked them with an H preceding the items.

Q. Horse and mule barn, 150 x 350; what is that used for?

A. That is used for the horse business—horses that are sent here for sale.

Q. Mule barn at 16th and Genesee, 126 x 392?

A. That is for mules for sale or in transit?

Q. Sparks barn, 125 x 250?

A. For mules for sale or in transit.

Q. Hay barn No. 9, 45 x 80?

A. For feed for that division.

Q. Six new mule barns?

A. For mules for sale or in transit.

Q. Where are all of these different buildings located?

A. All located in Missouri.

Q. Now, there is a feed building which I called your attention to the other day.

A. That is marked there.

Q. Hay barn, 32 x 48; what is that used for exclusively?

A. That is marked there, is it not?

Q. Yes.

A. That is used for hay, bran, and grain for the horse and mule department.

Q. Are these items that you have enumerated all of buildings that are used exclusively for the horse and mule business?

A. Yes; in the sense in which I understand your question, as referring to horses and mules that are here in transit or for sale.

Q. Then you have not included in this what is known as the Gould barn?

A. No, sir; nor the north sheds—the north stable here for the shelter of commissionmen's horses.

529 Q. But with those exceptions you have included all the property used for the horse and mule business?

A. All that is used exclusively by it; yes, sir.

Q. This horse and mule business occupies all the property south of 16th street and east of old Bell street?

A. No, sir; there is quite a corner there that the saloon, restaurant, and blacksmith shop are on.

Excused.

530 HARRY P. CHILD, recalled for further cross-examination by Mr. Boyle, attorney general:

Q. Who has the buying the hay? Who lets the contract for the company?

A. I do, with the approval of the general manager.

Q. Who is the general manager?

A. Colonel Morse.

Q. He usually agrees with what you have done?

A. Yes, sir.

Q. Who had the contract for 1896?

A. For furnishing it?

Q. Yes.

A. Five men for what was contracted. D. P. Miller——

Q. (Interrupting.) Who is Miller? What is his business?

A. He is a hayman out in Kansas.

Q. Who else?

A. Kaw Feed & Coal Company. They are dealers here in Kansas City. The Chesterfield Commission Company is three. I can't think of the other two names, but there are two others. These five men had 7,500 tons between them.

Q. Have you always let your contracts to practical haymen?

A. Yes; we have to do so, because we cannot trust anybody else as to quality at all.

Q. Do you know Mr. Veale, of Topeka?

A. Yes, sir.

Q. Did he ever have a contract with you?

A. He was associated two or three years ago, I understand, in a contract with——

Q. Mr. Frazier?

A. Yes; the contract was in Frazier's name.

Q. What business was Mr. Frazier in?

A. I think he is a banker.

Q. Did you let the contract to Mr. Frazier?

A. No; that contract was first let to Mr. Frazier by Colonel Morse.

Q. Don't know anything about the reasons why the contract was given to Mr. Frazier?

A. No, sir.

Q. That was one instance where one who was not a practical hay dealer got a contract?

A. Yes; but at the same time, as I understood, this hay was subcontracted by Frazier to some men who for ten or fifteen years had been furnishing hay and on whom he knew he could depend.

Q. You could have made a contract with these same men?
A. I presume so.
Q. What was the difference?
A. I don't know that there was any difference.
Q. Well, you know Mr. Frazier didn't take it for nothing?
A. I will say this: I knew that Mr. Frazier at that time took the contract for fifty cents less a ton then the other men.
Q. You don't know why Colonel Morse let the contract to Mr. Frazier?
A. No, sir.
Q. Nor what motive there was in it?
A. Nothing at all.
Q. Did you ever let a contract to a man who wasn't a practical hayman?
A. Yes and no; right directly as a hayman. Major Drought, who is now our superintendent of construction, would not be considered strictly in that business.
Q. Was he your superintendent when the contract was let?
A. No, sir.
Q. What was his business?
A. He had no association with us at all.
Q. What was his business?
A. Why, he was a contractor and builder generally in Kansas City, Kansas.
Q. For what period of time did he have a contract for hay?
A. I could not tell without going back to the records.
Q. You now buy directly from practical haymen?
A. We have just commenced that this last contract this last year.
Q. Why do you buy it that way now?
A. Because we buy on competitive bids. We received bids from all these parties and the lowest bid is accepted—that is, the lowest responsible bid.

By Judge HORTON:

Q. How do you say the contracts for hay are let?
A. On competitive bids.
Q. Who gets the contract?
A. The lowest responsible competitive bidder.
Q. Do you know whether in any of these contracts which the attorney general speaks of the company has ever paid more than a reasonable price for hay, the market price for hay?
A. No, sir; I have always believed that we bought out hay at the lowest figure that we could get the quantity and quality necessary for our business.
Q. While you are upon the stand, one question upon another matter: In the repairs of the yards down there, just state the difficulties under which you labor in making the repairrs.
A. The point, as I understand it, is the extra expensive conditions under which repairs have to be made. Our live-stock business is given the preference at all times over the bringing in of

material—brick for paving, for instance, in wagons. All materials has to come into the yards in wagons—brick, lumber, and all other materials—and in going through the yards, wherever they come across an alley or have to go along an alley which is occupied in the movement of stock, the material has to stop. It is not rare at all for a dozen wagons to stand back for half an hour waiting until stock is gotten out of the way.

Q. Without going fully into details, what class of business has preference in the yards?

A. Everything yields to the rapid and expeditious movement of the live stock in order to facilitate its disposition at the highest value.

By Mr. LITTLE:

Q. Mr. Child, how do competitors know when to bid for hay?

A. Once a year I send out notices to these different men that we have discovered in the past to be responsible men, and I presume they talk about it, and we get applications sometimes from thirty or forty people.

Q. Do you have any stated time in which they are allowed to bid?

A. It is generally about the first of June.

Q. You have no set 30 days or 60 days?

A. No; it is guaged wholly by the prospects of the hay crop.

Q. By mail, I suppose?

A. Yes; by mail.

Q. How many acres of ground are there in pens?

A. I believe I would rather not answer that without measurements.

Q. How much of it is in pens; half of it, say?

A. Oh, there is over half of it in pens; there is one three-fourths of it in pens, and a great deal of it is in railroad pens.

Q. How much of it is unoccupied?

A. I should judge there is something like fifteen acres.

533 HARRY P. CHILD, a witness heretofore sworn on behalf of the complainants, upon being recalled by them, in answer to direct interrogatories propounded to him by D. R. Hite, counsel for the complainants, testified as follows, to wit:

Q. When cattle yarded to be sold in Missouri, are sold to the Armour Packing Company, for instance, please state to the special master precisely what takes place after the sale between the buyer and the seller has been arranged; what is the usual action on the part of the buyer, the seller, the stock yards company, the Armour Packing Company and the employés of each of them?

A. The seller and the buyer meet at the point where the stock is yarded and agree upon the price; after the stock has been filled to the satisfaction of the seller by feed and water, at his option and under his orders, it is taken by himself or his employés to the scales of the stock yards company; it is there reported by him or his as-

sistants to the weighmaster of the stock yards company for the account of the consignor, to be weighed on his account to the Armour Packing Company, giving the name of the consignor, and the stock in the meantime has been driven onto
534 the scales by the employés of the stock yards company, and is counted off after being weighed by another employé of the stock yards company, and under instructions from a representative of the Armour Packing Company is yarded in a certain separate pen set aside for the bunching together of purchases by that house; in the meantime, the weighmaster has made a complete record of the transaction as shown, I think, by exhibits in this case, of the information upon his scale book, and has given a ticket, which is an extract of the information upon the scale book, to the seller. This record and ticket are the direct and exclusive work of the employés of the stock yards company, and are the basis upon which the sale is consummated; the figures and weights given are accepted by all parties as their own, and are unquestioned unless there is some outside evidence beyond the face of the record that there is some error on the part of the weighmaster; in case such an error on the part of the weighmaster can be shown, the stock yards company is liable to the buyer or seller as the case may be, for the damage, and has to pay the bill, this being one of the sources of loss in our business.

Q. Now, after the stock has been weighed under the circumstances which I assume, what then becomes of it; what action is then taken in regard to it?

A. It is, as I say, yarded in a pen set aside for the Armour Packing Company.

By the Master: By whom are they yarded?

A. By the employés of the stock yards company, and they remain there until the buyer or the driver of the packing house company is ready to have the stock removed to the packing-house. When this time has arrived, the drivers of the packing house company
535 come to the pen, and in the name of the packing house company demand the stock. An employé of the stock yards company opens the gate, and counts the stock out of the pen to the representatives of the packing-house, and by them it is taken from there through the alleys of the stock yards company to the outside gates, and through them, and from there in the charge of the packing house company's employés to the packing-house.

Q. Mr. Child, what has been the recognized practice between the packing house companies and the stock yards company, with reference to the responsibility for stock under the circumstances which you have just mentioned, after it leaves the scales, and until demand is made for it by the employés of the packing house company?

A. After it leaves the scales it is in the charge of the stock yards company's employés until it goes into this pen, which we term the catch-pen, and is still in the charge of the employés of the stock yards company until it is counted out to the employés of the pack-

ing house company; during all of this time it is in the charge and at the risk and responsibility of the stock yards company.

Q. After the stock is counted out upon the demand of the employés of the packing house company, what is then the recognized practice in the transactions between the packing house company and the stock yards company as to the responsibility for the care of those cattle?

A. It is entirely in the charge of the employés of the packing house company on the ground that it is in their charge exclusively; the stock yards company has no employé there present or in charge of it to direct its movement, and therefore it accepts no responsibility at such times; at all times when it is in the charge and control of the employés of the stock yards company, in its pens,
536 under locked gates, it is at the risk of the stock yards company.

Q. You are now testifying to the recognized practice between the buyers and sellers at the stock yards?

A. Yes, sir.

Q. Is what you have related, in the matter of the transaction concerning which you have testified, an illustration of the ordinary, average, daily transactions at the stock yards?

A. Yes, sir: our rules apply to all alike.

Q. Mr. Child, suppose that 100 head of cattle yarded in Missouri, originating in Kansas, are purchased by the Dold Packing Company, of New York, with the intention of shipping them to the Dold Packing Company in New York; please state to the special master what action with reference to those cattle is taken from the time the terms of sale are agreed upon between the buyer and seller at the pen in Missouri, up to the time the cattle are weighed.

A. It would be exactly as given in the Armour case.

Q. Now state to the special master what action is taken after the cattle are weighed, by the buyer, shipper of stock yards company or anybody else concerning the transaction.

A. The cattle from the scales, as in the other instance, are yarded by the employés of the stock yards company in a pen, which pen is made a part of the record on the scalemaster's book, and after that, Dold & Company or their representative have the privilege, and exercise it, when it is to their advantage to do so, of assorting those cattle, and changing them around in various shapes to make the right car-loads, or according to different qualities in case they are not already even. This representative of Dold & Company
537 then goes to the representative of the railroad company, each road having a live-stock agent at the yards, and gives him a written order on the stock yards company on a regular stereotyped form, with which the railroad agent is supplied—gives him an order on the stock yards company to deliver the stock to the Atchison, Topeka & Santa Fe Railway Company, for instance—one hundred head of cattle in such and such pens as he may have left them in when he got done shaping them up for shipment; at the same time gives an order reciting the pens they are in, which order is delivered by the representative or stock agent of the railway company

to the stock yards company as his order upon the stock yards company for those specific cattle. This shipping order being delivered to our freight office is, after being recorded there, sent to the shipping master's office and the shipping master makes out a shipping card embodying the same information and turns it over to the loading master with instructions to load the cattle, and in accordance with that the employés of the stock yards company take the cattle from the pens and drive them to the chutes; the railway company has, in the meantime, set the cars designed for the shipment at the chutes, and the stock yards company's employés load those cattle into specific cars, and close the doors on them, and report them back to the railroad company as loaded.

Q. In taking the cattle from the pens where they have been yarded under the orders of the Dold Packing Company, do the cattle traverse the property of the stock yards company, and if they do, what appliances and instrumentalities are used in taking the cattle from the pens to the cars?

A. They are taken from the stock yards company's property through the alleys of the stock yards company to the chutes
538 and loaded through the chutes from the platforms and into the cars; all of the property over which they move belongs to the stock yards company up to the car door.

Q. What is the recognized practice between the railroad company, the Dold Packing Company and the stock yards company, as to the responsibility of the stock yards company for the one hundred head of cattle after they leave the pen where they have been shaped up, until they arrive in the cars and the doors are closed upon them?

A. In the twenty-five years and more that I have been with the company, I have always understood and acted in all of my instructions on the idea that the stock yards company was responsible directly to the railroad company for the stock from the time it left the gate of the pen named in the shipping order until the car door closed upon it.

Q. As between the Dold Packing Company and the Santa Fe Railway Company, what is the recognized practice as to the responsibility for the cattle after they leave the pen named in the order and are delivered into the car and the door locked upon them?

A. I think, as far as I know, it has always been accepted that the railroad company was responsible to Dold & Company for the cattle until they delivered them at their destination.

Q. Is the illustration which you have used one which is applicable to the ordinary, every-day transactions of the Kansas City Stock Yards Company?

A. Yes, sir.

Q. Something was said with reference to an order for the delivery of stock after it had been weighed and then taken to the shaping-up pen; an order for the delivery of the stock to the railroad company by the shipper; please state to the court what your experience in that respect has been.

539 A. This order comes from the shipper, as has been given in evidence; it comes through the railroad agent in prac-

tically all cases; it may be there are exceptions; there are quite a number of exceptions in one direction. There are two or three roads that do a very small business in shipping stock out to the country—the smaller roads whose business is not great enough to warrant the employment of a special live-stock agent; by a special arrangement, the stock yards company clerks act as the agent for these roads to the extent of receiving the order instead of a live-stock agent receiving it, and in so doing, it is specifically understood at the time the arrangement was made, that they do so in the same sense that a live-stock agent would if he was there in their employ and that they accept all liability for accidents or errors that this clerk would make, the same as their own employés would have to do.

Q. Do the railroad companies having terminals in and about the yards, generally speaking, have live-stock agents there?

A. Practically all of them; there are only two or three exceptions such as I have suggested.

Q. I call your attention to the case of a car-load of cattle originating in the State of Iowa, and consigned to Kansas City, Kansas; please state what is done with those cattle when they arrive at the stock yards, not in reference to any particular pen they are put into, but state the actions of the stock yards company in and about the handling of those cattle.

A. They are set to the platform the same as any other cattle arriving at the yards, by the railroad company delivering them, and by the stock yards company, they are unloaded and are yarded in pens by the employés of the stock yards company, or turned over at the chute gate to the commissionmen, who take them and yard them in such pens as they prefer.

540 Q. Suppose that a car-load of cattle should arrive at the stock yards in the night-time; what would be done with it?

A. They would be unloaded by the employés of the stock yards company, and taken from the chute and yarded in the first pen of appropriate size for them, and in the morning, I may say the universal custom is for the commissionmen or their employés to go to the pen and have the gate unlocked and take the cattle from that pen and placed in such pen as they prefer.

Q. Now, as between the railroad company hauling those cattle and the stock yards company, what is the recognized practice with reference to the responsibility of the stock yards company as to the time when it begins?

Mr. Boyle objects to the question as incompetent, irrelevant and immaterial. Objection overruled

A. When the employés of the stock yards company open the car door.

Q. As between the railroad company and the shipper or consignee, or agent, what is the recognized practice as to the responsibility of the railroad company as to the time when it terminates?

Mr. Boyle objects to the question as incompetent, irrelevant and immaterial.

By the MASTER: If he knows, he may tell.

A. In a general way, I would say that the liability of the railroad company to the shipper ceases when the stock yards company as its agent delivers the stock to the consignee.

Q. In the case that we have been considering—of this car-load of stock arriving at the stock yards at night, when does that delivery take place?

A. In the morning when the stock is turned over to the commissionman or his employés or the consignee.

541 Q. In case any of the animals in that car-load of stock are found by the consignee to be injured, or the owner, when the stock is delivered, what is the recognized practice as between the railroad company and the consignee with reference to the responsibility for that injured animal?

A. His first claim is on the railroad company and the railroad company at once proceeds to shift the responsibility upon the stock yards company and it resolves itself into settling the point as to where and when the animal was injured; if injured in the stock yards after being unloaded or while being unloaded, and before delivery to the owner or his agent, the stock yards company makes the claim good to the owner ordinarily, at the same time recognizing that it is simply a short way of doing it, for though the railway company has really caused the injury, we are really liable, too.

Q. You are now testifying about the practice in the stock yards, are you?

A. Yes, sir.

Q. For how long a period has that been so?

A. Twenty-five years and a half that I know of; ever since they were built.

Q. The illustration which I have used with reference to a car-load of stock originating in Iowa—is that an illustration applicable generally to car-loads of stock originating in States other than Iowa?

A. Yes, sir.

And in answer to cross-interrogatories propounded to him by J. C. Boyle, attorney general, the witness testified as follows, to wit:

Q. If I understand you correctly, all these services of unloading the cattle from the cars, and taking them to the pens desig-
542 nated by the owner or his agent, and after the cattle have been sold taking them from the pens and putting them in the cars of the railroad company, and making out these different orders, and doing the different clerical work that is necessary, is done for the consideration of fifty cents per car that the railroad company pays the stock yards company?

A. Yes, sir.

Q. None of that service that is thus rendered is considered in this 25 cents that you charge for yardage of the cattle?

A. No, sir.

Q. What services, then, does the stock yards company furnis for this 25 cents per head for yardage?

A. It furnishes the yards, it waters the stock, it weighs the stoc it takes it from the scales to the pens so as to be shipped or drive

Q. What else?

A. That is about all, I guess.

Q. Twenty-five cents per head is charged for the service whic you have just described?

A. Yes, sir. There is another very important factor that I le out, and that is the risk of damage that the stock yards compan has to assume, and for which it has to pay bills of damage; whil we get the best employés possible, and assume that they are perfec they will make mistakes, and the stock yards company has to pa for them. A few days ago an error of ten thousand pounds in draft of cattle cost us four hundred dollars.

Q. How was that?

A. The weighmaster made an error in weighing the stock; h made it ten thousand pounds less than it was, and we had to pa for it, because it was not caught until the cattle had gone out. our employés make errors we have to pay for them.

543 Q. That is, in distributing these cattle around after the are received from the cars?

A. Yes, in driving them onto the scales, in driving them o from the scales.

Q. Something was said here in the direct examination to th effect that the reason why the stock yards company performed thi service of unloading stock was because it was found most expedien that the stock yards company's men knew better how to unloa and distribute stock than the railroad company men, and that i was cheaper for the railroad company to do it that way; is that th fact?

A. I do not remember the evidence, but I think that is practi cally the fact.

Q. Then, all the service that is rendered in taking the cattle fro the cars and back to the cars is rendered for this 50 cents, and th other service that is rendered for 25 cents per head you have de scribed, and besides these elements of profit you charge for the ha and the corn that may be purchased?

A. Yes, sir.

Q. When did you ever pay any damages to any railroad com pany for any lack of proper service or faulty structures, do yo know?

A. I could not go into that matter now, not being prepared fo it, but we have had quite a number of cases where we have pai claims to the railroad companies. I will recite one case; the clai was some two years old, but it was paid some three or four month ago. A car of horses was loaded out on the Memphis road; whe they arrived at Memphis the owner claimed that one of the horse had been injured, and I think died; the damage was one hundre dollars; the railroad company contested the claim and even wen

into the courts; the courts decided against the railroad com-
544 pany and made them pay one hundred dollars; the railroad company came back on the stock yards company; the evidence was not clear, but there was no way of proving the case, and the railroad company was very clear that it was not to blame, and that the injury must have been done here in the yards; so it asked the stock yards company to pay the money, which it did—one hundred dollars; it was evident that the stock had been injured in the stock yards; that was the *prima facie* showing.

Q. If it had been injured in the stock yards and it had been delivered to the railroad company in an injured condition, you would be responsible?

A. Yes, sir.

Q. That is the way you claim you have paid damages to the railroad company?

A. Yes, sir. Hold on, there may be a missing link here. This case comes right squarely within the evidence already given. These horses were held and handled in the horse and mule department, and a shipping order was given to the railroad company, and by the railroad company turned over to the stock yards company, which took these horses at the barn and took them to the train to load. The car was not there at the moment and they were run into a pen and stood there quite a little while and it was injured there—evidently by a kick; it occurred during this interval after we had received the horses on the shipping order to load for the railroad company.

Q. While they were in the charge of the stock yards company?

A. Oh, yes.

Q. That they were injured?

A. Yes, sir.

Q. They were delivered to the consignee at the other end of the line in an injured condition?

A. Yes, sir.

545 Q. There seemed to be some dispute as to where the injury occurred?

A. So the record down there seemed to show.

Q. And the person who received the horses sued the railroad company?

A. Yes.

Q. And recovered damages from it?

A. Yes, sir.

Q. Then the railroad company came back on you, showing it was by your negligence that the horse was injured?

A. Yes.

Q. That is exactly what I thought.

By the MASTER: Concerning the time of the delivery of stock that is shipped on to some eastern market: suppose that the non-resident purchaser buys by the head instead of by weight so there is no weighing; what becomes of that stock?

A. It takes the same course, except the act of running it to the scales and yarding it back to the pen; ordinarily in such a case as

that the shipping order would recite the pen in which the stock is standing at the time it is sold by the head instead of reciting the pen in which it is yarded from the scales; that is where it would start from instead as in the other case.

By the MASTER: Do you say that in unloading this car-load of stock that is shipped from Iowa, that it is unloaded by the stock yards company's employés, and if the consignee should be present at the time of the arrival of the stock he would be permitted to drive the stock to any pen that he desired in the yards?

A. Any pen that was not in use.

Q. If this shipper had named himself as the consignee, and should come on with his stock and be at the yards upon its arrival,
546 would he be permitted to drive the stock from the chutes to the pen that he might desire?

A. Yes, sir.

Q. So it does not necessarily have to be a commissionman?

A. I will explain that; I think possibly it is already in evidence. We have ninety-odd commission firms in the yards, and they have divided the yards up, and it is the object of the company to accommodate them in every way, shape and manner possible without encroaching upon the rights of others, as thereby we feel that we enhance the value of the stock, as they put it where they can sell it to the best advantage.

By Mr. BOYLE: Could there be any stock yards if there were not these chutes where the cattle are received and where they are shipped from the yards, and also the alleys leading from the chutes that distribute the cattle around to the different pens; could you run your stock yards without those appliances?

A. Why, certainly, in a very limited way; the stock would have to be unloaded at some chute somewhere and driven to the stock yards, which would be impracticable.

Q. These chutes and alleyways are absolutely essential to the working of the stock-yards plant down there, are they not?

A. Practically, yes.

And in answer to redirect interrogatories propounded to him by D. R. Hite, Esq., counsel for complainants, the witness testified as follows, to wit:

Q. Do you know of any other stock yards in this vicinity?

A. No, sir.

547 Q. Is there any?

A. Not nearer than St. Joe.

Q. When you testified a little while ago with reference to a car-load of cattle originating in Iowa, or a car-load of cattle located in Missouri for sale and yarding, I asked you about cattle only; now state if the same thing is true of all kinds of stock.

A. Yes, sir.

Q. You were asked by the attorney general what service was rendered for this 25 cents a head; I will ask you to state whether or not the shipper is given the privilege of the market?

A. Yes, sir.

Q. That is one of the things he gets, is it?

A. Yes, sir; and a very important one which I overlooked.

Q. In answering the attorney general, you didn't say anything about weighing.

A. Yes, I think I mentioned weighing.

By Mr. BOYLE:

Q. I will ask you if you did not in your previous examination—either you or Colonel Morse—in enumerating the many services which you perform for this twenty-five cents a head, when you were on the stand before, enumerate among those services many that you are now claiming that you perform for the railroad company?

A. No, sir.

Q. That has not been stated?

A. Yes, sir; it has been stated, but at that time it was stated simply as a detail of the entire work done by the stock yards company in order to show what we did.

Q. For whom?

548 A. Not for anybody as I understood the question; it was just simply a general question; it was to place the stock-yards business before the court was the idea as I remember it.

* * * * * * *

Here the master arose and adjourned until Monday, May 24, at the stock yards, at 2 o'clock p. m.

* * * * * * *

MONDAY, *May* 24, 2 p. m., at the stock yards.

HARRY P. CHILD, being recalled by Mr. Hite, testified further as follows:

Q. Mr. Child, calling your attention to the stock that is billed through, mentioned by Mr. Rust and yourself in your direct examination, that is to say, cattle that are brought to Kansas City en route to some other point for final destination, what is the fact with reference to the proportion of such stock that is fed at the Kansas City stock yards?

A. I may say that the cattle that are stopped in transit here to eastern markets are all fed; there may be occasional cases where they are not, but I never knew even of one; they are fed, watered and reshipped.

By Mr. BOYLE:

Q. You gave me one instance the other day where the stock yards company was held liable for damages; I wish you would call the attention of the master to some other cases where the stock yards company has been sued as the agent of the railroad company, where a case in court has been litigated, if you know of any.

A. I have no record of such a case. In this case there appears to be a misunderstanding; I didn't testify the other day that the yard company was sued; the railroad company was sued for the

loss, and having to pay it fell back upon the stock yards company for reimbursement, but not through the courts; simply a demand which we recognized.

549 HARRY P. CHILD recalled for further cross-examination by Mr. Boyle:

Q. I understand that when the horse and mule department has manure which it cannot otherwise dispose of, you direct where they shall put it?

A. Yes, sir.

Q. You do that personally?

A. As a rule, yes; under a general order until further orders.

Q. Who directs the disposition of the manure from the stock yards proper?

A. I do.

Q. How long have you had charge of that phase of the business?

A. 26 years yesterday.

Q. Where do you now dump your manure?

A. On the strip of ground west of Water street; that which is taken from the horse and mule market and from a small portion at that end of the yards goes to the bank of Turkey creek.

Q. Who owns the property upon which you dump at the bank of Turkey creek?

A. It is this 39-acre tract that has been discussed.

Q. What do you pay them for the privilege of dumping there?

A. Nothing at all.

Q. How long have you been dumping there?

A. I expect eight or nine years.

Q. Do you know what they do with the material that you dump there?

A. Leave it there to make land.

Q. How low is that land there west of Water street?

A. The present level of the land?

Q. Yes; as compared with the balance of the land.

A. About eleven feet below the level of the railroad track on Water street.

Q. The purpose is to bring that land up to grade, is it not?

A. Yes, sir.

Q. How long would it take, with the material you have there, to fill an acre up to grade?

A. I think we have got about 2¼ acres filled in about three years and a half now; about three-quarters of an acre a year, probably, at a guess.

550 Q. You have had a good deal of experience and observation, Mr. Child, and, of course, your judgment would be better than almost anybody's else. Where is that land you claim to have filled two acres and a fraction in the last three years and a half?

A. It is part of this strip that has been described here as being

west of Water street; there is that much of that eight acres or whatever there is of it, already filled—that is, filled apparently; it is not filled in reality, from the fact that every year we keep filling on top, and it keeps settling all the time, and it will be four or five years before it will quit settling.

Q. That is, it will not arrive at a condition of solidity and compactness sufficient to build on for four or five years?

A. Yes, sir; there is one phase of this matter I would like to explain.

Q. You can explain that to Mr. Hite.

Q. How long would it take to fill an acre so that it could be used for the purpose of building?

A. I presume it would take two years; of course, I cannot state it exactly, because it is a continuous thing.

Q. You have two acres and a fraction of that eight acres already filled now?

A. It is now apparently at grade, but if it is left alone in three or four years it will probably be down four or five feet.

Q. Then you will have to dump on there again?

A. We keep dumping on top all the time; keep it up.

Q. Where else do you dump?

A. On the west side, north of the quarantine grounds; all that comes out of the quarantine yards goes there.

Q. Where?

A. On the land immediately north of the quarantine yards.

Q. That seven-acre tract?

A. Yes, sir.

Q. I notice there is a portion of that seven-acre tra-t that is lower than the balance of it.

A. Yes, sir.

Q. What is the cause of that?

A. In grading up the Union Pacific land we took the dirt out of there, regarding it as the cheapest and most economical way of grading, leaving it in such shape that the high water of the river fills a great share of that back, and in that way we got the land at about half the price we would have been compelled to pay if we had bought it outside entirely.

Q. That is, the high water leaves a sediment?

A. Yes; fills it up to a certain level.

551 Q. Are you dumping any in there—I mean in the low basin?

A. No; we do with that just as we do with the other, work out from the edge of the yards. There is no such an amount of material over there as there on this side, because it represents only a small part of the area of the yards.

Q. You have but a small quantity of manure from the quarantine yards as compared with the manure from the north yards?

A. That is right.

Q. Do you use all the manure that you get from the quarantine yards on that seven-acre tract?

A. Yes, sir.

Q. Nobody other than the stock yards company takes manure away from the quarantine yards?

A. No, sir; we would not permit it at all, because the farmers who took it might kill their own cattle by contact with the disease germs.

Q. How much is that land below grade?

A. On an average, I should say, of from nine to ten feet; some holes are ten feet.

Q. In your best judgment, how — would *would* it take to fill that land up to grade with that manure from the quarantine yards?

A. We could not pretend to do that in that way; it would take 25 years; we will have to fill that from the outside when the time comes.

Q. There is none of this land west of Water street that is now completely filled?

A. No, sir.

Q. Are you using any dirt west of Water street?

A. Sometimes in replacing plank with brick, when we have to lower our grade a little, we take the earth excavated and dump it there; that is the only material that we use outside of the manure.

Q. That is used in connection with the filling process?

A. Yes; it becomes part of it.

Q. What I mean is, you get no material from outside sources?

A. None at all.

Q. Is there any manure hauled directly from the stock yards proper to this point on Turkey creek?

A. Literally, yes; but speaking of it in a general sense I might say no. I will explain it in this way: My foremen have instructions that when, in cleaning the yards, the business is such that they cannot get down to Turkey creek without waiting too long, to go to the north yards.

552 Q. Is that manure dumped there under the same arrangement as that from the horse and mule department?

A. Yes; simply to get rid of it.

Q. Is there any other ground than the strip west of Water street, north of the quarantine yards, and on the bank of Turkey creek, where you dump manure from the stock yards?

A. There is not, but at the same time you or any one else may have gotten the impression there was. We have two places right opposite our main yards where we started some two or three years ago to dumping over the river protection, with the idea that we could dump it right into the river, but we had to quit it; by our riprapping on both sides of the river we have limited the Kaw to its narrowest practicable limits, and it is dangerous to make it any narrower.

Q. How do you mean dangerous?

A. There is barely room for a volume of high water to pass now.

Q. Why is that true?

A. It is narrowed, and when high water comes it will rise above the tops of the walls and sweep away our property. When we started to dump the manure in there it was with the idea that the

current would wash it away, but we had to stop it because the manure seemed to mat together from the amount of hay in it and did not wash away readily, and we found we were building an island in the river and running the risk of gorging the street and overflowing our property, and we had to quit it.

Q. It makes good filling?

A. Yes, sir.

Q. Better than earth?

A. No, sir.

Q. You think it will *y*ake about 25 years to fill that parcel of ground north of the quarantine yards with the manure from the quarantine yards?

A. If you are going to make a point on that I will withdraw that answer. It was just a wild guess. I can't make an estimate on it; it is very slow work over there. I don't know but what it would take forty years; it is out of the question; there is but little of the material, compared with the acreage to fill.

By Mr. HITE: Is it of any advantage to the stock yards company to have such places for dumping manure?

A. Yes, sir; we have considered it quite a factor in our market
tohat we have kept our yards so clean; kept this matter so
553 thoroughly out of them. Stock arriving on the market after a long ride in the cars must rest before they will fill or eat to advantage; rest seems to be very requisite to the animal-, and we must keep the pens in such condition that they can he down and rest; if the pens are sloppy or covered with manure the cattle will not rest well in them and there is dissatisfaction, and business is diverted to other yards from competitive territory.

Q. What would it cost the stock yards company to dispose of its manure if it did not have this place west of Water street to dump it?

A. I made some weeks ago an estimate, as nearly as I could; it is somewhat theoretical from the fact that we have never gone into business in that direction, but it is my estimate that it would cost eight or nine thousand dollars a year to remove this material, in addition to our present expenses of scraping it up and loading it on the cars. To put it on railroad cars and pay the switching charges out to any point where it could be dumped I think would cost ten thousand dollars more than it does now.

Q. This piece of land lying west of Water street and the piece of land north of the quarantine yards are as much necessary for the use of the company as any other part of the yards, are they not?

A. I consider them, especially *t*he piece west of Water street, in a sense about as valuable land as we have got, because it saves us that much per year, which would pay interest on pretty high-priced land.

Q. And the same is true on the other side of the river?

A. The same is true over there, in degree.

Q. With reference to this dumping on the bank of Turkey creek; that is done merely as a matter of convenience out of the main yards?

A. Merely as a matter of convenience and economy, because it is

so much nearer the horse and mule market; otherwise that manure would have to be hauled clear through the entire yards.

Q. So that is done to save money to the stock yards company?

A. Yes; it is so much advantage to the company that we, in a sense, police the place to keep the city dumper from dumping garbage, manure, etc., there.

Q. You said something about some explanation you wanted to make.

A. I worked that in on the General.

554 By Mr. BOYLE:

Q. You police what place?

A. Turkey creek.

Q. How do you do that?

A. With our own employés.

Q. That land belongs to the State Line Improvement Company?

A. Exactly, but we have the privilege of dumping there.

Q. And they won't authorize anybody else to dump there?

A. We have no authority from them at all.

Q. They just let you do it?

A. We just simply do it, and they do not stop us. We see that nobody else takes the same advantage of them.

Q. They do not interfere with you?

A. Not a bit.

Q. This manure is of some value for filling, is it not?

A. To whom?

Q. To the person whose ground is being filled up?

A. Yes, sir.

Q. Well, is that the reason the Turkey Creek land is used for that purpose?

A. I could not answer, not having any contract with them on the subject.

Q. Well, do I understand that they would permit you to mutilate their land down there, Mr. Child?

A. No; all I say is that they permit us to dump our manure there; now, then, whether they look on that as a benefit or a mutilation, we do not know; they don't report to us on that.

Q. Suppose you had an acre of land north of the quarantine yards at the same level that that land now is; how long would it take you to fill that acre with your manure from the quarantine yards?

A. I could not answer that question intelligently, because I have made no estimate at all of the amount we have over there.

Q. Could you fill an acre in a year?

A. Oh, no.

Q. In five years?

A. Might possibly in four or five years; that is pure guesswork, though; I have no figures to work that from.

Q. How long have you owned that 7 acres of land?

A. I could not say positively, but I think it was in 1891 that we bought it.

Q. Have you been dumping there ever since?
A. No; because up to a year and a half ago we were dumping upon what is known as the Union Pacific lease; it was low also when we first leased it, but we have fil-ed it up in the meantime from the river, and otherwise.
555 Q. That was a part of the consideration of your lease, was it not?
A. Yes, sir.
Q. Could you fill an acre over there in four years?
A. It would be pure guesswork for me to say anything about it.

By Mr. HITE:

Q. The stock yards company does not own that tract down there on Turkey creek that the attorney general has been asking about, does it?
A. No, sir.
Q. That belongs to somebody else entirely?
A. Yes, sir.
Q. The stock yards company has no interest in it at all?
A. Not that I know of.

By Mr. BOYLE:

Q. That is State Line Improvement Company land?
A. Yes, sir.
Q. They have no other interest in it than this record discloses?

Objection as immaterial. Sustained.

Q. Are you familiar with land values in the Kansas City bottoms in the vicinity of the stock yards, Mr. Child?
A. By hearsay.
Q. How long have you been familiar with the values of lands down there by hearsay or otherwise?
A. Ever since the yards were built.
Q. That was in 1872?
A. 1871.
Q. Did you know what the value of land was down there in 1871?
A. I could not go back that far and state the individual years.
Q. I am asking you if you know?
A. Yes; I heard the prices in those days.
Q. Take it along in 1884, the yards had increased a good deal in size at that time, had they not?
A. Yes.
Q. Can you state the value of lands in that vicinity in 1884?
A. I could not go back that far.

By Mr. HITE:

Q. You are acquainted with the value of lands in that vicinity, now, are you?
A. By hearsay.

556 Q. How long have you been in the stock-yards business?
A. 26 years.

Q. What acquaintance have you had with lands used for stock-yards purposes?

A. Very perfect acquaintance with the lands used here in the stock yards.

Q. Have you ever seen lands used elsewhere for stock-yards purposes?

A. Yes, sir; in the Chicago yards; I was four years there.

Q. State whether you know the value of lands in the vicinity of the bottoms for stock-yards purposes.

A. I think I do.

Q. State what, in your judgment, is the piece of land that is designated by the letter *a* on this map worth at the present time for stock-yards purposes.

Objection as not proper cross-examination. Sustained.

Q. What was that land worth in 1884 for stock-yards purposes?

Same objection. Sustained.

Q. Do you know the value of the property now owned by the stock yards company, comprising 40 acres and a fraction, lying west of the Kansas and Missouri State line, for stock-yards purposes?

Same objection. Sustained.

Q. Is that property worth fifty thousand dollars an acre?

Same objection. Sustained.

Q. Is it more valuable for stock-yards purposes than for any other purpose?

Same objection. Sustained.

Q. What experience have you had with reference to ascertaining the value of stock-yards property in the west bottoms in Kansas City, Missouri, and Kansas City, Kansas?

Same objection. Sustained.

Q. You were asked with reference to the value of lands in the vicinity of the stock yards, were you not?

A. Yes, sir.

Q. Do you know of any lands in the vicinity of the present stock yards that are as valuable as the stock-yards property?

Same objection. Sustained.

557 Q. Do you know a tract of land in the vicinity of the stock yards known as the Split Log tract?

A. Yes, sir.

Q. What is the average grade of that land as compared with the grade of the land we have been talking about north of the quarantine yards?

Same objection. Sustained.

Witness excused.

558 HARRY P. CHILD recalled for examination in rebuttal by Mr. Hite:

Q. Are you acquainted with the system of conducting stock yards in the West?

A. Yes, sir.

Q. Are you acquainted with the general location of the various stock yards in the West?

A. Yes, sir; quite intimately so.

Q. State the names and locations of the principal stock yards in the West.

A. First is the stock yards of Chicago; second, Kansas City; third, Omaha; fourth, St. Louis; fifth, Indianapolis, and then after that there is quite a number of smaller ones. There are stock yards at Cincinnati, at Sioux City, at St. Joseph, Missouri; at Wichita, Kansas; at Denver, Colorado; Pueblo, Colorado, and Salt Lake City.

Q. With reference to the St. Louis yards, is there more than one stock yards known as the St. Louis stock yards?

A. There are two yards at St. Louis—one in St. Louis proper, called the Union stock yards, and one about two miles east of St. Louis, in Illinois, St. Clair county, called the National stock yards. The National yards do a very much larger business than the Union yards. The Union yards do a very small business.

Q. State whether or not, in your opinion, there is a value which attaches to the business of a successfully established stock yards over and above the value of the real estate, structures, improvements, and personal property assembled together and used in carrying on such an established business.

A. There is a very decided and appreciable value over and above what you have mentioned in a successful stock yards.

Q. Please state to the special master whether, in your opinion, from your knowledge of the plant, there is such a value in the business of the Kansas City Stock Yards Company, considered as an entirety and unit and a completed system of stock yards and as a going concern.

A. Yes, sir; there is.

Q. Please state to the special master what elements enter into your estimate with reference to this value, which you say attaches

559 to a successfully established stock-yards business, and particularly what elements enter into your estimate and statement that there is such a value attaching to the business of the Kansas City stock yards, considered as a unit, a completed system of stock yards, and a going concern.

A. In arriving at this value to which you refer, I approach it from two different ways: First, as has been set forth in the record by the witnesses, in case I was commissioned to buy these stock yards, my first move would be to get an intelligent idea as to the value of the real and personal property—the tangible property. With this for a starter, I would go to the stockholders and see at what price I could buy their stock, realizing that the yards could

not be acquired except by the purchase of this stock. The value of the stock would in a very fair way—possibly the most positive way—determine this value, and I would figure the entire plant over or under the tangible value. In this case, of course, it would be over, from the fact that the stock is at a premium of probably a little more than one-third the face value of the stock, which I would consider would place the property at that much more than its face value, or in the neighborhood of ten million dollars. As a second method of arriving at that intangible value—the value of the intangible property, or what has been termed the good will—instead of terming it good will I would represent it more by the word success; it is the element that would have to be paid for; it is the element of success—to arrive at this—I can explain it clearest to the court by, as briefly as possible, reciting the methods and the expenses of creating a successful live-stock market. Going back to our own case, at the time the stock yards were first built in Kansas City the plant represented but a small outlay—possibly about seventy-five thousand dollars when we first opened business—and from that it has grown up to what we now have shown in evidence as to its value. At the time these yards were first built Kansas City, Atchison, St. Joseph, and Sioux City were all in the race for supremacy as the metropolis of the Missouri valley. The success of the city in a sense determined the success of the yards. As all those cities were in the corn belt, in a sense they all had practically an even show. The battle has been fought and won.

Kansas City is acknowledged by all as the city, unless
560 Omaha claims a little rivalry yet, and I guess it does, but Kansas City has succeeded to the point that it is now a great city that will maintain itself in a commercial way possibly for all time. With the growth of the city the yards have grown. The growth of the city has been made by the yards and by all the other commercial industries, and through them has been drawn the railroads, which in their turn have assisted in the making of the city. They have been possibly the greatest factors of all, as they have opened up new territory year after year, until now we have seventeen distinct and separate railroads delivering business *business* from almost all possible territory to Kansas City, and especially the live-stock trade. The first element of a market is stock yards. There can be no good market until stock yards, good stock yards, are built. The next element needed is buyers and packing-houses. The packing-houses are the best buyers, because on the face of the situation their investments, as shown by their lands and buildings, have a permanence that inspires confidence in the sellers, for from the force of the situation the plants must be kept going, and therefore there must be a live, active market; but packers are not enough, because packers may combine to crowd prices down at times, and, whether they do or not, the fear in the country that they will do so is a tangible feature in deferring business from or to a market. Therefore order buyers and shippers must be secured—order buyers for other packing-houses in other cities, order buyers for export of cattle and export of hogs. In addition to this, it has been shown

by practical experience that commissionmen are a great factor in making a market, not that they are absolutely necessary to sell stock, because any intelligent man can sell his own stock to the buyer, but they are a factor in assisting in the work that the stock yards company and the railroad companies do in soliciting new business from new territories. Still another very important factor is the speculator, as he is termed on the markets, and to show his value I will give you an illustration. A shipper brings in a car-load or a train-load of stock and gets an advantageous offer from a buyer for the larger portion of it; but there are some cattle,
561 for instance, that are not of the class that the buyer wants, and he cannot use them. He says he will buy the others, buy the train-load, with these thrown out, and unless there is a market for those odd animals the shipper could not take his good offer, because he could not afford to pay freight on those few odd ones to another market. The speculator is necessary to buy these odd cattle, bunch them, and get them in larger bodies so as to sell to people wanting that class of stock. At the time these yards were built it was a very auspicious moment for the venture, as the year before Abilene, Kansas, 160 miles west on the Union Pacific railway, had been selected as the destination of the vast herds of range cattle driven from Texas, at which place they first took the cars for the eastern markets. The result was that right from the start the Kansas City Stock Yards Company had a fairly good business, first simply feeding in transit, but with this large volume of cattle feeding in transit it was a very short time until commissionmen dropped in and commenced selling in a small way to shippers, and gradually the market has grown from that small beginning. More commissionmen have come in, until now we have 90 firms at the yards, and all of them are working to bring business to Kansas City. The seventeen railroads are also working for Kansas City indirectly, each of them, the commissionmen and the railroads, working for their own selfish interests, but incidentally the Kansas City market reaps the benefit. The packing-houses are in evidence, the number of them here and the means by which they were secured. In the early years of the yards, possibly the first ten years, the business was of an entirely different nature from what it is today—almost entirely, so far as percentage goes, of those Texas or range-cattle business, cattle that came in in even qualities and grades and sold the same way, without cutting up, sorting, or dividing, but sold in strings, ordinarily from ten to forty car-loads in a sale. The result was that the yards were not put to anything like the expenses that they are now in handling the business. The yards consisted of very large pens, holding from five to fifteen car-loads to the pen, and they were not floored. The business was simply to run those immense strings of cattle into the pens, and when sold or shipped to run them out in a body and dispose of them. At that time there were no quarantine
562 yards to maintain; there were no north yards or only in a very meagre way a few catch-pens, and there were no speculators' yards. The speculators now require about one-fourth of our main yards for their business. All of these elements have been factors in

building up the yards to their present magnitude, and also in i
creasing in about the same proportion the operating expenses. Th
business with which we started has increased about tenfold up t
the present time from the early years, the first five or six years, pe
year. The expenses have increased about one hundred fold in th
value of the plant and operation and maintenance. This is due, a
I explained, to these additional necessary yards and also to th
entire change in the character of the business. In the early day
we had no hog pens, or just a few little sheds for transient busines
The hogs were practically all bought by the packers in the countr
and shipped in by them and driven to their houses; the sheep th
same way. The cattle business has changed until now it is a ra
thing to find more than two or three cars that the owner is conten
to have in one pen. If he has ten cars he usually grades them int
different classes, so that we have got to have a multiplicity of pens
the three or four grades require different pens. The result of th
has been the spreading of the yards, and it has been a constan
steady work ever since the yards commenced to keep up with th
procession in supplying adequate capacity for the business. As
said, there are now ninety commission firms, and here comes a
element as to what we term good will. These firms have, on a
average, about one solicitor each; some of them four or five; sou
of them none. There are seventeen railroads that will averag
about four solicitors each; the stock yards company has three o
four. All of these solicitors are working for Kansas City. The
salary and expense accounts will average at least $2,500 per ye
for each one of them—all of these solicitors for the commissionme
stock yards company, and railroad companies, and I will make th
estimate safe by saying they will average one hundred per year fo
the last ten years, or we will say fifty per year for the last twen
years; that will be the better way of estimating it. Fifty solicito
at $2,500 a year is $125,000 per year; for twenty years it wou
563 amount to two and a half million dollars, that has been pa
out directly to bring business to Kansas City. These me
are all working for their own benefit or that of their employers, b
the Kansas City market, which is represented by the stock yar
company, reaps the benefit of their work as well as our own. Anoth
factor is a business which has grown to mammoth proportions
the last ten years, and that is the loaning of money on cattle in th
country to feed or graze. This money is loaned by the banks an
commissionmen of Kansas City and is practically a mortgage on
least nine-tenths of the stock represented in the loans that th
stock shall come to the Kansas City market. The owner practical
has no say. The commissionman ties that up in his contract, as
rule, that the stock shall come to him and he shall have the sale an
the commission arising from it. That is another great factor an
is a part of what constitutes the Kansas City market. It is n
really and yet it is almost a tangible factor in the business. Th
business has built up a daily live-stock paper here, market repo
the Daily Telegram, which is subscribed to by the commissionme
and the stock yards company and sent out to every man in territo

that can be even remotely considered as tributary to Kansas City, as an advertisement of the market, giving the daily quotations, furnished free to the reader. The paper now has a circulation of about fifteen thousand copies a day and represents, during the last ten years, at least $500,000 spent that way, just for advertising the market and persistently day after day forcing these prices before the men who have stock to ship, and in that way inducing them to come here; also in all cases where they get information that stock has been shipped to other markets at the same time as to Kansas by a single owner—in other words, what we call split shipments—and Kansas City realizes the higher price, they parade that and in that way emphasize the fact that Kansas City is a better market, and thus induce more stock to come here. The correspondence by ninety firms and the telegrams which they send out I cannot estimate, but it has been and is a very great factor in building up this market over a market which has very few solicitors. The solicitor is a great factor, because he goes into territory just as fast as a road is extended and goes to work for Kansas City. As an illustration, I was talking
564 with a solicitor for one of our firms yesterday, who has just been to Louisiana and reports that he has gotten three thousand cattle to come within the next two months from those swamp parishes where the man that the solicitor spoke to didn't know that there was such a place as Kansas City; had never heard of it. It is such things as that that makes the Kansas City market. This money which I have estimated at two and a half or three million dollars, including the paper, I consider is a faur tangible evidence of the value that this market has now in its success, and the cost that would have to be put into another market to develop it up to the same point of value that is recognized by the commercial world in classifying and pricing the stock of the company and making its quotations—quotations which are based upon the fact that the property of the company is an absolute security for the money invested. It is an open and notorious fact of information that money in large quantities—of a million dollars and upwards—is content to accept a very low rate of interest provided the security is ample; for instance, when a Government loan is placed, they have no difficulty in selling the bonds at two or three per cent. The stock yards company, having been in active, live, and continuous existence and paying regular dividends of about six per cent. for 25 years and never missing a dividend, is recognized by the commercial worls and commercial interest and the capitalist as being as secure as Government bonds, and from the fact that it pays about double the interest I assume that they measure the value of the stock at about double the premium that they place on Government bonds, that being about the status today. That, I believe, is my estimate of the cost and value of the good will of the Kansas City Stock Yards Co.

Q. Is the present location of the plant desirable and valuable over and above the tangible property there because of these various facts and elements that you have recited?

A. I consider it so. One other point, and that is the location in the corn belt. That has been testified to as a vital element, but it is one that the other Missouri River cities have had about the same advantage of. Omaha and Kansas City are the only ones which have made any success of a market with the same condition surrounding all, and they have been successful because they are
565 far enough apart for each to live. The St. Joe market has failed because it is too close to Kansas City.

Q. What, in your judgment, Mr. Child, measures the selling price of a plant like the Kansas City Stock Yards Company's plant, considered as an entirety and as a going concern?

A. I measure the selling price, and I assume there is only — way by which you can measure it, and that is, What can you buy the stock for? The stock represents the plant, and the stock must be purchased in order to control the plant.

And in answer to cross-interrogatories propounded to him by Mr. Boyle, attorney general, the witness testified as follows, to wit:

Q. You think the stock of the Kansas City Stock Yards Company is equally as secure as a Government bond?

A. I think it is so recognized by investors.

Q. This plant was originally stocked for something like $96,000, I believe?

A. Yes, sir.

Q. It is now stocked for $7,368,650, and you still think the stock is equally as secure as a Government bond?

A. Yes, sir.

Q. When stock sells at par what does it represent then?

A. Simply an estimate of the buyer and seller that there is a question whether it will be worth more or less than par.

Q. Well, what does it represent; what does stock represent when it is selling just for par; it would represent then just the value of the property, would it not; there wouldn't be any margin beyond the value of the property? Isn't that true?

A. It depends on what the property was.

Q. No; it don't. You have been speaking in the abstract?

A. Yes, sir.

Q. Now, suppose stock is selling just at par, what would the stock then represent; it would represent just the value of the property?

A. Yes; just the same as if it was selling for fifty cents on the dollar it would represent the value of the property as measured by the two men—the buyer and the seller. The sale of the stock is an estimate of the value of the property, whatever that value is.

Q. It depends on the view that the buyer and seller may
566 take of this intangible something called good will, does it?

A. Yes, sir.

Q. Now, you think when stock is selling at a premium, you think that premium is a guide, in a measure, in determining the value of what we call the good will or success of the business?

A. Including the physical value; yes, sir.

Q. We have — reading in the newspapers in the last day or so of

the remarkable career of a man who recently drowned himself, who speculated largely in the gold fields of South Africa; at one time he organized a stock company in certain gold fields over there, and the stock went up to several thousand per cent.; now, what did that stock, as it went up on the market, represent—the premium over and above the par value?

A. It represented the estimate of the buyer and seller of the future prospects.

Q. The good will of the institution?

A. It was the value on it at the time.

Q. Now, as a matter of fact, it developed afterwards that that stock was not worth a penny; would it, at par or at any other point, represent the actual value of the property?

A. Not in the mining business; the mining business is not a thing to compare with the stock-yards business at all; here is a demonstrated business; that is speculative and problematical.

Q. You must make exceptions in the stock question?

A. I am talking about stock yards companies' stocks—that is, what I know about it.

Q. Stock yards companies are in a different category than any other enterprises whose stocks are on the market?

A. I don't know whether it is or not; I am not posted on other stocks.

Q. You say that the commissionmen are not necessary for the sale of stock in the markets?

A. I say they are not an absolute necessity; they are a great benefit.

Q. Could a shipper come here and dispose of his cattle, as an ordinary practice, without the aid of the commissionmen?

A. Yes, sir; there is absolutely no restriction whatever.

Q. What would be the probability of his being able to make successful sales, Mr. Child?

A. I think they would be very poor.

Q. Now, you have been in the stock-yards business for 26
567 years; what are these commissionmen—who are—and what do they do?

A. They are men who are located here, who are in close touch with all the buyers, and through their position and information they are enabled to obtain higher prices than the owner can himself, in this way: The owner comes in with a car-load of cattle and attempts to sell them himself; he does not know the buyers at all; we have probably two hundred buyers on the market for cattle alone; there are fifteen or twenty grades, we will say, of cattle; one man is a strong buyer for a certain grade, and another wouldn't have them at all; he is not dealing in that class. The owner is liable to walk right past the man who wants his cattle and is specially demanding them and go to the man who has no use for them at all. The commissionmen know every buyer and know just—they want, and they go immediately to the buyers and make sales before the buyers are led off by other sellers.

Q. Where does the commissionman make his profits?

A. He gets a commission from the owner per head or per car-load for selling the stock.

Q. What do they charge down there?

A. They charge on cattle fifty cents a head, not to exceed ten dollars a car; on hogs, six dollars per car; sheep, six dollars per car, and for double-decked cars ten dollars per car.

Q. Those charges are in addition to the yard company's charges?

A. Yes; they have nothing whatever to do with the stock yards company's charges.

Q. What other charges are there? Is there a Government inspection charge?

A. There is no Government inspection charge at all; there is a charge made of fifteen cents per car-load on hogs only, for inspection as to dockable hogs, that was aimed at in this new anti-dockage law.

Q. But it is still in force?

A. It is still in force, and that is the outgrowth of the decision and arrangement of the sellers and buyers united to obtain this dock from an entirely disinterested party.

Q. The shipper pays the bill?

A. He pays the fifteen cents.

Q. You say the railroad companies have been great factors in building up this market as well as these foreign buyers and speculators and packers?

A. Yes, sir.

Q. And also this newspapers on which you gentlemen have
568 spent a good deal of money for sending out market reports, and for traveling solicitors?

A. Yes, sir.

Q. You say the cost of these solicitors of bringing the packing companies here and sending out the paper and telegrams and things of that kind would be a fair way of discovering the value of the good will of this business?

A. Yes, sir; because they represent the expense to make the business.

Q. That is, anything that goes into the element of expense that has contributed to build up this great enterprise would be a proper element to determine the value of the good will of the stock yards company?

A. Yes, sir.

Q. There have been seventeen railroads built into this city and you gentlemen have claimed that one of the influences which have served to bring these railroads here was the stock yards. That is an expense which it seems to me ought under your theory to be counted in making up the value of the good will of the company.

A. No; I think not.

Q. Why not?

A. I think not, because the railroads have built in and have been factors, of course, but it only represents in the creation of the market the money which has been spent to bring the business here. The

railroads have come in here for all the commercial interests of the city besides.

Q. But still you remember that in your former testimony, in expatiating upon the virtues of this market and showing what a grand thing it was for the shippers, — went on to demonstrate that the stock yards company, having built here, had built up around about a great city, and that attracted the railroads here and all these things; that there had not been any of these things here practically before your stock yards came, and that your stock yards brought these things here. Don't you remember of testifying to that?

A. I think you have got it too strong, General.

Q. Modify it a little and let us have your answer.

A. I think the city's growth and the stock yards' growth have brought the railroads, but the stock yards company has not brought the railroads in the sense in which you ask the question.

569 Q. What proportion of the railroads has the stock yards company brought?

A. That, of course, could not be answered at all without the reports of all the railroads, giving all their tonnage and all that sort of thing.

Q. That proportion, however, should go into this will, on the same theory with the rest?

A. Yes; that is the intangible portion of it.

Q. That would make more than two millions and a half?

A. Not necessarily.

Q. Why not?

A. Because there is no immediate outlay that I can name as representing that. This other is tangible; it is dollars and cents paid to these solicitors for soliciting business to Kansas City.

Q. How much do you give the city of Kansas City credit for in your good-will proposition?

A. I did not in making up my figures have that influence in mind. I cannot arrive at any immediate direct expense on the part of the city for the sake of building up the Kansas City stock-yards market.

Q. Has the value of the property of the company in the bottoms increased by reason of the growth of the general business in the city?

A. It has increased all over Kansas City; of course, that portion of it carries its proportion of increase.

Q. What do you mean by that answer?

A. About what the values were about twenty-five years ago.

Q. These things which you have been mentioning as making up the good will have also contributed to increasing the value of the property down there, have they not?

A. In developing the yards they have assisted.

Q. How do you separate the two values—the value of the physical property and the value of this ethereal something that you talk about—how much of this two and a half million dollars for traveling solicitors, and so forth, has gone into increased value of the land?

A. I do not attempt that at all; it is a thing that I could not arrive at.

Q. But you can arrive at it the other way?

A. Yes; because there is the money actually paid out.

Q. None of the paper went into the land at all; none of the benefit of the work of these solicitors; none of the benefit of the building up of this business has increased the value of the land down there, Mr. Child?

A. The growth of Kansas City has made——

570 Q. Can you answer that question, Mr. Child?

A. Yes, sir.

Q. Please do so; I ask you if any of that expense has gone into the increased value of the land.

A. In developing the market it has increased the value of the lands the same as any other industry in Kansas City has increased in value—the land.

By Judge MARTIN:

Q. Mr. Child, you spoke about the north yards not being developed until long after the main yards were developed; when were the first pens built in the north yard; about what year?

A. The first pens there were a few pens owned by the Missouri Pacific Railway Company and used as transfer pens; they were there when the present stock yards were built. I think it was in 1872 that the stock yards company bought out the party who had them leased, and ran them in connection with the other yards, and for several years we had a few large pens there for feeding and handling.

Q. Did you buy any land there until 1876?

A. No, sir. This was on the land of the Missouri Pacific, and was leased for a nominal consideration. It was several years later—1876, '77, and '78—before we built any further construction on that side.

Q. Do you know what year the company erected the first pens or made the first improvements there?

A. I could not say; just as an impression, I should say 1876 or 1877.

Q. That was in a very small way?

A. Very small way.

Q. Did you then have any tunnels or viaducts to connect the north yards with the south yards?

A. Not at that time; it must have been along about that time—1876, '77, or '78—that we built our first tunnel under the track.

Q. The north yards have been practically developed and improved within the last four or five years, have they not?

A. I may say the last ten years.

By Mr. HITE: Do these commissionmen have any tangible property down there at the stock yards?

A. Nothing at all except office fixtures.

571 Q. In furnishing the service which you described, do they furnish any conveniences in the way of space for the exhibition of the stock for sale?

A. None at all; that is all done by the stock yards company.
Q. Have they a very large capital invested in their business?
A. Some of them have a very large capital; in a sense, their capital represents the sum mentioned awhile ago—twenty million dollars—because they, as a rule, are the guarantors of the cattle paper which the banks take and furnish the money on.
Q. All the yard property down there that has been testified about is necessary for the use of the yards, is it not?
A. Yes, sir; every particle of it.
By Mr. BOYLE: When the market is good you don't charge any more than when the market is low at the yards?
A. No, sir.
Q. When the market is low you charge the same as when it is high?
A. Yes, sir.
Q. In other words, your prices, like the famous stream, go on forever, unvarying and uninterrupted?
A. The charges of the stock yards company have no relation whatever to the value of the stock.
Q. Or the prices that the shipper gets from time to time?
A. No, sir.

By Mr. HITE:

Q. You furnish the same service, do you, for yardage, in every respect, irrespective of the market price of the stock, do you not?
A. Always the same, irrespective of what the seller receives.

Witness excused.

572 CHARLES F. MORSE, a witness produced by the complainants, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to direct interrogatories propounded to him by A. H. Horton, counsel for the complainants, testified as follows, to wit:

Q. State your name and residence.
A. Charles F. Morse; residence, Westport, Missouri.
Q. What official position do you occupy in the Kansas City Stock Yards Company?
A. I am vice-president and general manager of the company.
Q. Who is president of the company?
A. Mr. Charles Francis Adams.
Q. Where does he reside?
A. His residence is Lincoln, Massachusetts.
Q. How far is that from Boston?
A. About twenty miles out; his office is in Boston.
Q. What are his duties or what duties does he perform in connection with the position for this company?
A. As president of the company he is chairman of the board of directors and presides at all meetings of the board. He has general direction of the affairs of the company; he has charge of all financial matters, so far as raising of any money is concerned outside of

what is used here in Kansas, or, at least, what is required here in Kansas City; he visits Kansas City—his custom is once or twice each year; formerly much oftener then now, but now at least once each year; goes over all matters connected with the company with myself; makes his reports to the board of directors from such information as he receives, and in all such transactions as relating to the larger negotiations with packing-houses and sometimes with railroads; he gives his time and assistance to whatever extent is necessary; goes to such places as may be necessary in connection with the business; summons me to Boston occasionally—two or three times a year usually—for the purpose of discussing and being informed as to any matters which seem to be of general importance.

Q. About what aged man is he?

A. He is about sixty.

Q. What are your duties—you stated you were vice-president and general manager—what are your duties? What duties do you perform in connection with the position?

A. I have general charge of the business and property of the
573 company; take general supervision of all matters connected with the business; fix the policy in regard to all matters and particularly see to all expenditures—that is, every expenditure that is made passes in some way before me. I examine every voucher of every amount, small or large, on which any money is paid out for the company, and all such payments are approved by me.

Q. State whether or not you have anything to do with looking after the business—the general business of the company—in the way of building it up and carrying it on.

A. That is, perhaps, what I have particularly had charge of more than anything else—has been the promotion as far as possible and extension of the business of the company.

Q. Officially, what have you done in that regard, so far as your company is concerned?

A. I should have to make something of a statement, I presume, of the original conditions of the company, etc., when I came, in order to make myself clear on that point. I became general manager of the company in 1879 and took charge here the first of February, I think, 1879. At that time the company had been in operation about eight and one-half years, since some time in the year 1871. The facts as to the operation at that time were something to this effect: In the year 1872, which was the first full year of the operation of the company, the company had received 236,802 head of cattle during that year, 1872; and when I took charge in 1879 the receipts of cattle had diminished every year until the year 1879 they were the smallest receipts that there had been any time since the yards had been in operation. In 1878, which was the year preceding my coming to Kansas City, the receipts were 175,314 cattle. There had been no market created whatever for such cattle as had been received in those eight years; the cattle had been mostly Texas cattle on their way through to Chicago on through shipments; the yards had taken charge of in passing through and had fed them,

nd in connection, of course, with this larger business there had een a certain amount of small shipments of cattle which had filled ie orders of the butchers of the city, just the retail trade here. There was also a very limited amount of speculation going on in attle; the small operators who had a little money would buy some f these cattle that would be passing through or in transit, or would ome here with a view of selling butchers there and shipping forward to Chicago on the possible margin there would be, but
74 the experience I found, when I looked over the situation, was that these speculators as a rule only lasted a year or two, ecause it had been very risky and had proved to be an unprofitble business, so it didn't establish anything of a market; the conditions were substantially the same in 1878 as several years before.

Q. The year before you took charge what was the total of all head? You gave the number of cattle.

A. The total number of hogs, in addition to the cattle I have given, was 427,777 head; of sheep, 36,700. The hogs had, to a large extent, been bought in the country by small packers that had been in operation, and were shipped in to them, so that the yard company, while it had the record of that number of hogs, did not derive very much profit from them. Some came in and were sold, but a great percentage of them were bought in the country by the packers.

By the MASTER: Mr. Morse, these numbers you are now giving, as I understand you, represent sales made here, or the arrivals?

A. No; the total receipts. I believe the record—the report of receipts—has already been handed in here with other documents.

Q. In order that the master may be fully informed, is it not a fact that most of these went through, instead of being sold?

A. I stated that—that these cattle that were received at that time were Texas cattle that were billed through to Chicago. This had become a feeding point for these cattle, and part of them were fed here, part of them at Atchison. All the cattle were driven from Texas and ranged at Abilene and Fort Dodge. It was in transit that they stopped here on the way to Chicago; but of these Texas cattle hardly any were even offered on the market; there was no market for them.

Q. How was it as to sheep?

A. Sheep—there was no market at all.

Q. Where did all that go?

A. That was all for Chicago or St. Louis at that time. There had been, prior to 1878, altogether, three small packing-houses in operation here; two of them had closed up; one—the beginning of the present Armour house—was in operation in a small way. The only buyer at the time I came here on the market was the Armour packing-house. At the time, or soon after, the yards started, two banks had established branches at the stock yards, the Maston bank and the First national, but at the time I came here both of these
575 banks had closed their doors; these branches had been shut up. The cause had been largely on account of losses which they had met with in connection with the cattle business, which at

that time was done in rather a reckless way. The Armour bank had just started a branch there. That was the only bank there at that time.

Q. What did you do personally in connection with your office to add to the business of the company?

A. After looking the situation over I met with the president and board of directors, and they submitted a proposition that, in their judgment, from the course of business, there was no future for the stock yards unless a market could be developed here; that they had seen the business go down——

By Mr. BOYLE: Who was this?

A. I was speaking of the president and the board of directors that I met with after this examination of conditions on my coming here.

By Mr. BOYLE: You need not state what they said.

A. I will state what I did. I went to Chicago, where at that time the principal stock yards of the country were and now are—where the principal stock market was—and made as careful an examination as I could of the conditions that surrounded that market, and found that it was necessary to take some pretty vigorous steps in order to get any of those conditions at Kansas City. I recommended the use of a large amount of money in——

By Mr. LITTLE (interrupting): I don't think it is competent for Colonel Morse to say what he told those people.

By Judge HORTON: Go on with what you did.

A. After this examination of matters at Chicago, running about the market there, I began negotiations with a large packing company with a view of establishing it at Kansas City. This covered a period of about a year's time. At the end of that year—1879—the negotiations were completed and arrangements had been made by which, and at an expenditure of something over a hundred thousand dollars, a packing-house was established here, and work was begun on it so it was in operation, I think, quite early in the spring of 1880.

Q. What company was that?

A. That was what was known as the Anglo-American Packing & Provision Company.

576 Q. Go on.

—. That house began operations in quite a large way, and the receipts of hogs from that time increased, and a market was established here—that is, there was very little buying after that of hogs in the country. There were two strong buyers in the market. Others began to follow. After the establishment of this house I had negotiations with other houses.

By Mr. LITTLE: If the court please, I move to strike out the testimony of the witness in regard to his expenditures for the packing-houses. It is no part of the money invested in these stock yards, and is in no way pertinent to the issues in this case.

The master overruled the objection.

Q. Go on.

A. The packing-houses which were established in this way from time to time from this one which I spoke of in 1879 up to——

By Mr. BOYLE: 1879 or 1880?

A. The negotiations were made in 1879—1879 and 1880; they covered both those years. There has been for the same purpose and in the same way other packing-houses established.

Q. Give their names.

A. Kingan & Company, Swift Company, Jacob Dold & Company, Schwarzschild & Sulzberger Company, and Armour & Company. Every house which is now in operation here has received inducements in a large way to establish themselves.

Q. What has been the total amount of those inducements?

A. $775,874.28.

By Mr. LITTLE: We make the same objection to the evidence in regard to each expenditure and to the total.

The master overruled the objection.

Q. Now, go on and state how the yards and business have grown since then.

A. You mean to state the area?

Q. No, no; I am speaking of the receipts; have you got them?

A. I have an official list of all receipts; this statement is published as the official statement of the receipts of the company, giving in detail the receipts of roads.

Q. We just want last year; repeat it.

A. The receipts in 1896 were 1,714,532 cattle, 100,160 calves, 2,605,575 hogs, 993,126 sheep, and 57,847 horses and mules.

577 Q. Right in that connection do you know anything about whether the hog market has increased or not; and, if so, from what time?

A. The hog receipts?

Q. Yes.

A. The hog receipts since 1885 or 1886, beginning with 1885, from the year 1884 up to the present time, have not materially increased—that is, they have fluctuated backward and forward from year to year; they fell as low in 1893 as 1,948,373; that was less than the receipts of 1885.

Q. How has the corn crop in Kansas been during those years?

A. The corn crop and the hog crop are almost parallel. The large corn years are followed by large years of hogs, and if there is an appearance of a failure of the corn crop the farmers all though the country sell off their stock hogs, and the receipts will begin to diminish until there is another corn crop, when they begin to increase their stock again.

Q. State, in connection with the establishments of these various packing plants here what, if any *any* way, was the result of your efforts as to buyers coming here after the establishment of the first packing house—that is, the Fowler house?

A. There began to be order buyers come in from the eastern markets. These buyers were buyers who would take the opportunity when the market was favorable of buying a number of car-

loads—whatever quantity they would require to fill the orders which had come from their eastern correspondents, and this has been a business which has grown almost with the packing business. This made, of course, competition between the two classes of buyers who never got together; representing different interests entirely, it makes more active competition.

Q. When you took charge about how many acres of ground were occupied for stock-yards purposes; how much did the company own at that time?

A. The company owned in 1879 about seventy acres.

Q. What was the condition of its surroundings at that time; I mean the character of the improvements or the want of improvements surrounding that property?

A. These seventy acres of land lay down there next to the Kaw river and adjoining the Union Pacific tracks; there were no improvements anywhere about the yards, on the outside of the yards, except a few small residences of workingmen, generally; on the north side of the Missouri Pacific, what we call the north side
578 yards now, it was practically all vacant property. On the west side of the Kaw river there was a belt of cottonwood trees about three hundred feet wide along the river—most of them, a great many of them, of natural growth; back of them were cornfields, with occasional farm-houses through there.

Q. You said that there was about seventy acres. How much of that was actually occupied or used for stock-yards purposes—that is, when you took possession?

A. I have tried to get at that accurately, but there are no records that I have been able to find that have that exactly; but my impression is—and what I would say would not be very far out of the way—would be about twenty-five acres.

Q. At the commencement of these proceedings in March, how much land did the company own and control?

A. I will say that the statements I have heard made by some of the preceding witnesses have not been exactly accurate. These figures I have got by an examination of our records with the engineer of the company; have been over everything carefully and know them to be correct. I know that as well as I can know anything of this kind. The company now owns, or did own the first of January or March, in Missouri, just forty two acres. It owns in Kansas 97.557 acres, making a total which the company owns of 139.557 acres. It leases from the Union Pacific Railway Company 13.97 acres; from the Missouri Pacific Railway Company 5.75 acres; from the Rock Island and the Kaw Valley Townsite & Bridge Company 3.02 acres, making its total land owned and leased 162.311 acres.

Q. You stated that you had been connected with the company since 1879. Where have you lived during all of that time?

A. In Kansas City most of the time. I moved outside of the city limits a few years ago to Westport.

Q. That is practically in the city?

A. Practically inside the city.

Q. State whether or not you had been engaged in buying lands

during that time in this vicinity and in Kansas City, and how extensively.

A. Do you mean since that time?

Q. Since you have had anything to do with Kansas City.

A. I have bought considerable land.

Q. In the vicinity of the stock yards?

A. In that vicinity, before I was connected with the stock yards company.

579 Q. I am noe speaking about your knowledge of real estate. How extensively have you knowledge of lands in Kansas City by buying lands in Kansas City at any time, or, rather, when did you commence buying lands?

A. The first land I bought in Kansas City in what we call the bottoms, which is in the vicinity of the stock yards, were the terminal lands used by the Atchison, Topeka & Santa Fe Railroad Company. Those were bought in 1875. I had charge of the purchase; made a purchase of 25 acres, which were bought at the rate of one thousand dollars an acre. This 25 acres is now occupied by the freight depot and yards, running up to a connection with the union depot.

Q. Go on and give also what you know about sales of property there, and then I will ask you about values.

By Mr. BOYLE: I do not think it is necessary for you to give the prices at which you bought this property or sold it. Your only purpose is to qualify him to testify as an expert?

By Judge HORTON: Yes.

By Mr. BOYLE: It would not be necessary for him to give the prices at which he bought these lands or sold them.

By Judge HORTON: It shows his superior knowledge of the values of property, but it would properly come out in another way.

By the WITNESS: You do not want the values?

A. We will pass it for the present. State how long you have been buying and concerned in the selling of land in Kansas City, Missouri, and Kansas City, Kansas.

A. Since the year 1875.

Q. State whether you are acquainted with the value of the lands owned and occupied by the Kansas City Stock Yards Company.

A. Yes, sir; I am acquainted with the values of the lands.

Q. How many purchases—I am not asking prices now; simply to show your acquaintance—how many purchases of land have you made, not for the stock yards company, but in that vicinity; not the value, but simply how many purchases have you made?

A. This one I referred to, for the Atchison, Topeka & Santa Fe Railroad Company. One in the same year for the Arkansas Valley Elevator Company, three acres; in 1879, a number of different tracts of land, embracing altogether in the vicinity of one thousand acres, all of the land lying west of the Kaw river, which is

580 now included in the limits of Kansas City, Kansas, and south of the Union Pacific tracks.

Q. What did you do for the Union Depot Company?

—. For the Union Depot Company—I was a director at the time

the company was organized, and one of the management that bought the present location of the Union depot, which is about seven acres.

Q. About what year was that?

A. That was in 1876.

Q. What did you do for the Rock Island Company?

A. In 1886 I bought part of the land that is now occupied by them as a freight station and freight yard, just half a block east of the stock yards.

Q. Since 1879, state what official of the stock yards company has had the sole control of buying its land.

A. I have had entire charge of the company's lands since 1879.

Q. Are you, from your knowledge in buying and selling lands, acquainted with the present actual value of the lands owned by the Kansas City Stock Yards Company?

A. I am.

Q. In your judgment, what would be the actual present value of the land owned by the Kansas City Stock Yards Compony—I mean, aside from the improvements?

A. In making that answer I should like, if it is satisfactory, to give it in three or four different pieces, because the stock yards consists of three distinct tracts of land, one being what we call the main yards, another the north yards, and the other that lies on the west side of the Kaw river, all of which are subject to different conditions as to surroundings and as to use. This tract of land (referring to the blue print in evidence) this is Genesee street.

Q. In what State is that?

A. That is in Missouri. To start with, there is the State line, which passes right through this part of the yards, from there to there; this part is in Missouri, and this part in Kansas. It so happens that in this piece of property I spoke of first, the land is almost equally divided by the State line; there are 40 acres here in the Missouri part, and there are 42 and a fraction acres there on that side.

Q. Making in all in this particular piece?

A. 82 and about one-half acres.

By the MASTER:

Q. East of the Kaw river?

581 A. East of the Kaw river and south of the Union Pacific tracks. It is the solid piece of ground that lies right there.

By the MASTER: That is what you call the main yards?

A. The main yards—every foot of these yards is in use. It is covered by cattle pens, hog sheds, railroad tracks, and buildings—so far as it is possible to utilize the ground—and the bulk of all the transactions that are connected with the business are transacted right here. The live stock exchange is the central point in these main yards, and the business is mainly transacted right there. There are transactions over here and over here, but here is where the market is. That piece of property I value at $56,000 an acre. That is the rate at which all the later purchases have been made and

under the rate at which about a quarter of it has been bought. Every part of it is as valuable as that part that has been bought more recently.

By Mr. BOYLE: Eighty acres?

A. Eighty-two acres and a fraction—82.8 acres.

Q. What is the total?

A. It is $4,592,000.

Q. Just state to the master which particular part of that was more recently bought, and when it was bought.

A. This strip which starts close by the Union Pacific on 12th street, running through to 19th street, bounded on the east by Genesee street, and which comes right up against our property on the west.

Q. About when was that purchased?

A. That was purchased—most of it beginning in 1893 and running up into 1895—it took about three years of purchasing.

Q. What did the company actually pay per acre?

By Mr. BOYLE: How many acres are you talking about?

A. About twenty-two acres.

By Mr. BOYLE: Is that included in these eighty-two acres?

A. Yes, sir; that is included in the eighty-two acres.

By Mr. BOYLE: The question is, how much you paid an acre for it.

Q. How much money did the company pay for it?

A. I will come right down to the average in a moment, but I will say that in the different purchases 11.8 acres cost $88,097.07
582 per acre. After making these purchases, which cost that, the other purchases, which were made in that same tract of 22.858 acres, were made at a total cost of $1,289,239.73.

Q. Averaging the whole thing?

A. At the rate of $56,401.72 per acre. In that connection, I would say that this included all of the area of the streets and alleys which were vacated by the city, after the purchases of all the other lands had been made, so that it brings the price per acre down to the whole cost of everything—land, vacated streets, and all.

By Mr. LITTLE: That means the vacated streets and other parts other than that 22 acres?

A. No, sir; just in that area. This tract on the north side contains 35.02 acres—that is, this tract of land that lies north of the Union and Missouri Pacific railways and east of the Kaw river, bounded on the east by the Kansas City & Northwestern railroad.

Q. 35.02 acres?

A. Yes, sir.

Q. What do you value that per acre?

A. That is in two divisions also; the greater part of it, comprising about 27 acres, lies up here on the high land, occupied now by improvements, and was nearly all bought in the shape of town lots. This strip along the river was bought as acre property, and a part of it is not improved at all. Part of it is subject to overflow at extreme high water. This property here I value——

By Mr. DANA: That is the high land?

A. Yes, sir; I value at the rate of thirty thousand dollars an acre. That is rather below the average of what all the property has cost in the last six or seven years. It has been bought in the shape of lots, at about an average of one hundred dollars a front foot. That is as low as anybody can get any property, probably, adjoining there today. The portion next to the river, 8.6 acres, I value at ten thousand dollars an acre, making a total of $86,000. Part of that land we have paid for at the rate of $18,000 an acre. That makes the valuation of these two tracts in the north side yard $878,600. Now, on the west side of the Kaw river there are two tracts also. This one, where most of the quarantine yards are located, contains 14.97 acres. I value that at $12,000 an acre. That is less by considerable than what the adjacent land has sold for. The
583 other tract that the company owns there is a tract of seven acres of land, or very close to even seven acres of land. That land was bought a number of years ago.

By the MASTER: Just locate it.

A. Lying north of the land that is leased from the Union Pacific Railway Company, right next to the Union Pacific tracks, and west of the Kaw river and north of the quarantine yards.

By the MASTER: What is the number of acres?

A. Seven acres.

By the MASTER: I want to get it so I will understand it when I come to read it. It lies north of the quarantine yards that are in use?

A. Yes, sir.

By the MASTER: And west of the river?

A. Yes, sir; south of the Kansas Pacific bridge. This land was bought a number of years ago at the rate of—it cost in bulk thirty-five thousand dollars—and I value it at just about that rate now—about five thousand dollars an acre. The land thus far has not been improved, and will require to be raised six or eight feet to bring it on the grade of our other land.

Q. What, then, do you make the total aggregation of the present value of the lands owned by the stock yards company?

A. $5,685,240.

Q. State whether or not, in your opinion, that is a fair valuation at this time.

A. Yes, sir; it is a fair valuation.

Q. State whether or not that was a fair valuation at the time this action was commenced, in March.

A. There is no material difference in value since then.

Q. They spoke something about some ground not occupied or actually used. Just state what there is about that.

A. In the first place, there are these seven acres I have just spoken of that lie on the west side of the river and which were bought with the expectation of filling as rapidly as *as* might be necessary to bring it up to grade, and to use in addition to the quarantine yards that are there, in case they were needed.

Q. In that connection, state whether or not that is the ground or place where the United States inspector said that certain parts of

the yards were needed in cleaning out the yards. Is that the place?

A. Yes, sir; that is used as a dumping place for what is supposed to be infected manure. It is entirely remote from any possibility of contagion to any other cattle.

584 Q. So it *it* is a convenient place for that use. Is it a convenient place for that use?

A. Yes, sir.

Q. What is this other land?

A. The other land that amounts to any area is this strip of land that during this recent high water was below the stage of high water. It lies along the Kaw river and contains about eight acres. It will all be useful in the extension of the yards, but it could not be used at this time and was not needed at this time, but the place where land was required when the more recent additions were made was over here where the market was. It would not have been possible to have moved the market over there any more than to any other place where cheap land might have been obtained.

Q. State how those yards are operated, whether altogether or how.

A. It is operated as one complete property all through.

Q. Are you familiar with the value of the buildings and improvements upon the property owned by the stock yards company at this time?

A. Yes, sir; I am.

Q. Familiar, in the first place, with the cost of those buildings—the original cost?

A. I will just explain in regard to that. These buildings, many of them, have been rebuilt once or twice, and, as a rule, the new buildings are better and more valuable than those that were originally constructed, yet the figures representing the cost, which has been charged, are the cost of each building—the total cost is $1,460——

By Mr. LITTLE (interrupting): Wait a minute; I think he should qualify himself in regard to his familiarity with the buildings.

By Judge HORTON: I asked him if he knew the actual cost; this is the man who pays the money for them.

By Mr. LITTLE: Does he? Let us find out *his* his familiarity was gained.

Q. Do you know the actual cost of these buildings?

A. Yes, sir; I do.

Q. State what the actual cost to the company of these improvements on this ground has been.

A. $1,460,703.33.

Q. State now what amount of actual money has been put into the stock yards and improvements.

A. You mean the cash expenditures?

585 Q. Yes. We will come to that a little later.

A. I will answer the question.

Q. State the actual money.

A. $6,137,398.

By Mr. BOYLE: That represents the land and——

A. The land and the improvements and the cash inventories of feed, etc., in addition to the land and the improvements.

Q. In addition to the land and the improvements which you have, just state what other properties the company has for its use without going into detail.

A. It has always on hand large stocks of hay and grain, horses, carts, wagons, harness, tools, hose, office furniture, and all kinds of supplies; everything that is used in any way about the yards, lumber in large quantity usually, fence posts; usually have a considerable quantity of paving brick.

Q. What do those items amount to?

A. On the 31st of December, 1896, to $315,377.25.

Q. Your bank account, where is that kept?

A. Well, we keep a considerable balance here always, have to, and we keep an account in Boston, too; keep a considerable amount there. We draw on it if needed from time to time.

Q. Who is the financial agent in Boston?

A. Charles Merriam.

Q. Where does the board of directors meet?

A. 50 State street, at his office.

Q. In what city?

A. Boston, Massachusetts.

Q. State to the court now, with your knowledge of these purchases, what it would cost today to reproduce in that place those yards with the conditions they are now in, with the improvements, and all the properties connected with them and the patronage going to them.

A. That is a very difficult question to answer for the reason that if all of the conditions were not there today which make the values of the property it would be difficult to imagine them there without the stock yards, but if it is the idea to imagine that everything is there, with the stock in the country to come to it, I do not think that the conditions could be replaced there under anywhere "from eight to ten millions of dollars." It means twenty-five years of work in building these yards from nothing to what they are now, and the immediate consequence of the building has been the
586 building of a city all around them, and all of these conditions are hard to imagine with the stock yards gone.

Q. How many railroads now center around the yard and are in condition to transport cattle and stock to these yards and away from them?

A. I think seventeen is the number.

Q. State whether or not there are any railroad companies now centering here but what have connections with your yards.

A. There are none that do not connect with the yards, either by their own tracks or by tracks over which they have the right to have their trains moved.

Q. State in regard to what is known as the Belt railroad. What does that do in connection with transporting or moving cattle and stock, if anything?

A. The Kansas City Belt railroad was promoted by the stock yards company for the purpose of obtaining connections with roads on the south side of the city that were not well situated to go over their own tracks to the yards.

Q. I didn't hear the last part of your answer; what does it do?

A. It connects with some of the roads in the southern part of the city which would have difficulty in getting in over their own tracks, and it furnishes them with trackage to get to the yards.

Q. In what States does that operate?

A. In both Kansas and Missouri.

Q. What is the other company?

A. The other is the Suburban Belt Company; that furnishes trackage for the Pittsburg & Gulf road and the Osceola & Southern; I don't know certainly of any others except those two.

Q. What local business particularly is adjacent to these yards?

A. The great business is the packing business that is on either side of the yards. That and the small manufacturing business that grew up because of the packing-houses form the main surrounding property; then there are hotels and stables.

Q. What about railroad switches around the yards?

A. The railroads, in the first place, as the map shows, occupy quite a large area right at the north end of the main yards; they also bound the yards on the west, the tracks of the Belt railway and the Union Pacific; the Rock Island comes in on the south and occupies ground and has yards on the south of the property, and the Chicago, Burlington & Quincy owns property to the south of the main yards. Half a block distant the Rock Islands owns
587 property almost along the whole length of the stock yards; there is only half a block really between the Rock Island and the stock yards company's property. On the north side the Kansas City & Northwestern has its yards and station, passenger station right next to the property. It is almost surrounded by railroads, and then the packing-houses lie, as a rule, across beyond the railroads.

Q. There has been some testimony given here as to having solicitors employed by the company; what are they and what are they for?

A. The company keeps three or four or five, according to the season of the year; solicitors whose business it is to travel all through the southern and northern country and personally meet the owners of stock in all of that country in competitive territory, to keep them advised at all times as to the markets and what we claim to be the superior advantages of Kansas City as a market, and also to be ready to assist in loading trains for those stockmen, in gathering their cattle, and generally to make themselves useful on the outside in gathering up and directing the business to Kansas City.

Q. Who employs and pays them?

A. They are employed by the stock yards company.

Q. And paid by them?

A. Paid by the stock yards company.

Q. What do you call competitive territory?

A. There is a very large part of all the territory that the stock comes from that in one sense is competitive. Much the largest part is what we distinguish particularly as competitive. What I distinguish particularly as competitive territory is territory that lies more adjacent and more conveniently situated to reach other markets than Kansas City, or at least equally well situated for that purpose, and where we have to encounter the direct competition of other markets, which apparently have an equal chance of getting the business.

Q. Can you give some of these States and Territories?

A. Texas is all competitive territory; the Indian Territory is largely competitive territory; Oklahoma is competitive territory; all of Nebraska is competitive territory; the northern strip of Kansas and of Missouri is competitive territory. The markets here in Missouri naturally lie east from here, because any stock that
588 comes back from Missouri to Kansas City pays, relatively, more than it would to go the other way.

Q. How is Iowa?

A. Iowa is, of course, competitive territory; Minnesota and Wisconsin the same. When you go into the western country—Colorado, Wyoming, Idaho, Oregon, and New Mexico, in that country—that is considered a common field by all the live-stock markets—that is, they all operate in those places, because it is so remote that it is largely a question of who can represent the best market figures.

Q. Of what benefit is it — your corporation and to shippers to have the patronage of competitive territory?

A. It is an advantage to the company naturally and necessarily, because it increases the bulk of its business; it is of advantage to every shipper to Kansas City, because the larger the market and the greater variety of live stock there is—the bulk of receipts—the more buyers there will be on the market, and the greater variety of buyers, and consequently higher prices stimulated than with a smaller market.

Q. State what the earnings of your company were for 1896, the gross earnings.

A. The gross earnings were $1,023,870.20.

Q. What were the expenses?

A. $549,351.80.

Q. What were the net earnings after deducting all necessary and proper expenses?

A. $474,518.40.

Q. State from what sources the gross earnings were derived in a general way.

A. Loading and unloading, which represents what was paid to the company by the railroad companies, $76,803; yardage, $665,658.05; feed, $187,994.69; yardage and commissions, horse and mule market, $19,116.20; rents, $68,706.73; interest, etc., $5,591.53; total, $1,023,870.20.

Q. What rents did you receive and from where?

A. The largest item of rent is from the Exchange building. The rooms in that building are generally rented to commissionmen, agents of the packing-houses, railroads, buyers, a large bank in the building, and a few miscellaneous offices, but generally to those I stated.

Q. What was the gross rental of the building?

A. $53,699.28. The company also owns a large hotel building.

Q. Whereabouts is that hotel building?

A. It is inside the property; right opposite the live-stock
589 exchange. It has always been necessary to have a hotel or restaurant or something of the kind close by in order to be convenient for the people, and this house was bought as a small building and then enlarged and made into a large hotel. It is rented for six thousand dollars a year.

Q. Is that included in these items you have given?

A. Yes; I am just answering Judge Horton now as to what the rents were; I gave them as one item in the gross earnings.

Q. State the number of items which make up your expense account of $549,351.80.

A. Labor, $262,882.73; office and sundry expenses, $66,191.65; material, $65,404.47; paving, $75,169.87; insurance, $12,836; rents, $7,200; taxes, $22,671.25; special city taxes, $35,703.06; loss and damage to stock, $1,292.77; total, $549,351.80.

Q. State if your office and sundry expenses, whether or not that includes all that you call salaries or not.

A. No; that does not include salaries at all.

Q. What does that include?

A. I will give the separate items. It includes advertising, licenses, Boston office expenses, traveling expenses of company's agents traveling on company's business, telephones, stationery and postage, transportation bureau, fuel and lights, feeding company horses and mules, stable supplies, hose, tools, and sundry supplies; water used in the yards, harness repairs, shoeing horses, etc. There are a great many small items.

Q. What rents do you pay out, and to whom?

A. We pay the Union Pacific Company six thousand dollars a year for about 11 acres over in the quarantine grounds. That land, I would state, was leased on a long lease. It was leased about ten years ago, the condition of the first ten years being—when it was leased it was down low; below high-water limit. The lease was made for the first ten years on the condition that the land should be raised to the grade of the Union Pacific tracks and riprapped in front and protected from the river. For the next ten years the property should pay all taxes and six per cent. on its appraised value. This filling of the land and riprapping was done in the first two or three years and cost something over fifty thousand dollars, and it has been charged out so much a year—the tenth part of it each year. We call it as rent. We also pay the taxes that are assessed on it.

590 Q. What per cent. would that be and upon what valuation?

A. The present rate or the rate for those years has been *been* at a valuation of one hundred thousand dollars for the 11 acres.

Q. Is there any leased from the Missouri Pacific?

A. The Missouri Pacific we have no lease with, but instead a permit from year to year. They have never been willing to give any lease because they were liable at any time to need the land for railroad purposes. We have paid eight hundred dollars a year there.

By Mr. BOYLE: Are these included any place?

A. In the expense account; they appear as rents.

Q. State from your knowledge and acquaintance with the management and operation of these yards how the expenses have been, whether they have been carefully and economically looked after or not.

A. The expenses have always been kept as low as it was practicable to have them and keep the property at all times maintained, and give such service as was required. There have been times—I think testimony has been already given—when it would have been possible to have had less services in the yards, but it cannot be done without injuring the business by not waiting on patrons in good time; consequently, we have always kept a full force of employés in all the departments to perform this service as quickly and as well as we could.

Q. Are you acquainted with the rates of wages of laborers who perform services of the same kind or similar to those performed by your employés in this community or vicinity?

A. Not very well. I know about the pay of railroad men.

Q. As to the employés of the company, state, in regard to them, whether you have intelligent men, or what kind of men you have to manage and look after the business.

A. It has been the purpose of the company to have good men right through, from the officers in the higher places down to the men who just have charge of handling cattle. It is a kind of business and a kind of work that there are a great many to complain if anything is the least out of the way, and we try, as far as we can, to avoid that by having intelligent men and men who value their places enough to perform good service.

591 Q. From your knowledge of the matter, state whether or not the expenses for 1896 were unusual or in any way different than what was necessary.

A. The expenses for 1896 were, in general, similar to what they would be with any year of similar business.

Q. What repairs are needed now or must be put in?

A. The principal items of repairs and renewals this year, and for which arrangements are already made, are paving to about the same extent as last year——

Q. (Interrupting.) How much will that be?

A. We expect to include about fifteen acres this year in renewing the floor with paving; that will come to about $75,000. It runs about $5,000 an acre. Then we have got to rebuild and are letting contracts for the rebuilding of the viaduct over the Missouri and Union Pacific tracks, which will be a steel structure costing in the

neighborhood of twenty-five thousand dollars. The tunnels under those tracks are beginning to give out, and as the stock yards companies are responsible to the railroad companies for any disaster whatever that may happen on account of the tunnels, we have to keep them in the best of order all the time. This year they will be practically reconstructed by putting in more solid foundations on the sides of the tunnels and generally rebuilding them. Our contracts and estimates for that are in the vicinity of twenty thousand dollars. Those are the main items.

Q. What other improvements are usually necessary about the yards?

A. There is always some improvements, additions, or repairs to be made to nearly every building in the yards. The viaducts need the most careful attention at all times to see that they are—every part of them—in good order; the flooring and supports, the water and sewer systems require attention all the time and renewals from time to time, and those, with the miscellaneous buildings, represent the main renewals. According to what has been the experience for a great many years, the ordinary yard expenses, leaving out these repairs and renewals, run about thirty-five per cent. of the gross earnings. They have ranged from, I think, as low as 33% up as high as 40%, 41%, or 42%, but, take it one year with another, we usually expect to get through with a yard expense of about 35%.

By Mr. BOYLE: Of the gross earnings?

A. Of the gross earnings. That takes in the ordinary yard
592 expenses, but does not touch these renewals that I am speaking of now, which are growing naturally larger every year with the greater extent of improvements.

By the MASTER: That includes repairs, you say, in that 35 %?

A. Nothing more than nailing a board on a fence or something of that kind. There is a small force that goes about repairing gates and things like that. It does not include such things as these large matters which I spoke of, which are taken hold of as a job by itself.

By Mr. BOYLE: What items of expense in your expense account do you include in this 35 %?

A. I could separate it if necessary.

By Mr. BOYLE: You need not do it now.

Q. During the last thirteen years or about that period of time what dividends or interest have been paid to the investors in *these* stock *t*ards company per year, on an average?

A. The dividends have averaged, if you take it that way, for thirteen years six and one-half per cent. The rate as varied from five up to as high as nine. The company has paid usually a quarterly dividend of one and one-half per cent.

Q. What was the dividend or interest during the last current year?

A. Six per cent.

Q. Have you issued any bonds or anything to deprive the owners of any part of these incomes or interest?

A. No, sir; the company has never had any bonds on its prop-

erty; it has occasionally borrowed large amounts of money in temporary loans.

Q. It has no bonded indebtedness?

A. No, sir.

Q. And it gave away no part or portion of the earnings, or, rather, added to the expenses of the fixed charges?

A. No, sir; it has no debt on the property at all.

Q. With the present business of the company state what the effect or the decrease of the net earnings of the company would be if the proposed rates recently enacted by the so called act of the legislature of Kansas concerning stock yards were enforced. How much would they decrease or affect the earnings if they were put in force?

A. If they were put in force in the year 1896?

Q. Yes.

A. In my affidavit which I made a month or so ago I stated that the amount would be $309,000. Since that time I have had
593 as accurate a statement made as it is possible to make. Of course, it might vary a few dollars, but this is as nearly accurate as possible for any one to make of the difference it would make. My figures are $316,585.05.

Q. What do you say that is?

A. That would be the reduction of gross earnings of 1896 if they had been made by the application of the rates fixed by the law you refer to; they would have been reduced by $316,585.05, which would have made the gross earnings for that year $707,285.15.

Q. What would it leave in net earnings of the yards with that reduction taken out?

A. Assuming (which would have been the fact) the same expenses, the net earnings would have been $157,933.35.

Q. What rate of interest would that be upon the present actual value of the property?

A. A trifle over two per centum.

Q. State whether or not during 1896 and since the company has used all its best endeavors to increase and carry on its business in a successful way.

A. Yes, sir; it has done everything that it could do to produce these results.

Q. Do you know of any extravagant salary, payment, or expenditure of any kind or character during that year or up to this time?

A. No, sir; I know of no such expenditure.

Q. State whether or not the receipts and expenses of the business since the first of January have been about the same as last year.

A. They are running about the same as last year.

Q. At the time that you made for the company these last purchases state whether or not the unoccupied land could have been used for that purpose at that time.

A. I think I have answered that question; I think I went into that question quite fully at one time.

The hour of 5.30 o'clock p. m. having arrived, the master arose,

and the further taking of testimony was adjourned until Saturday morning, May 8th, at 9.30 o'clock.

A map of the yards showing the various divisions in red lines and marked A, B, C, D, E, &c., offered and admitted in evidence, marked A A; not offered to show acreage of said tracts.

594 Morning session.

SATURDAY, *May 12th*, 1897.

Taking of testimony resumed.
Parties present as before.

Colonel CHARLES F. MORSE on the stand.

Direct examination concluded by Judge HORTON:

Q. There was some testimony given here about the stock yards company receiving from the railroad companies fifty cents a car for loading and unloading stock. State whether or not that is a matter of profit or loss to the company.

A. We figure it is a matter of profit; it is a business that could be done if there was no other business and some money made out of it; probably about the same percentage that we would make out of the other business.

Q. We speak about the stock yards company. What is the present name of the stock yards company?

A. The Kansas City Stock Yards Company.

Q. When did that company first acquire and take possession of any property?

A. The company received its charter December 10th, 1883, and it took possession of the property January 1st, 1884.

Q. State whether or not that is the company which is the defendant here.

By Mr. BOYLE: What is the date of the charter?

A. December 10th, 1883. The company was organized and took possession of the property January 1st, 1884.

Q. That is the present company which is the defendant?

A. That is the present company which is now in question.

Q. We spoke about some other stock yards. State what the difference was.

A. It was successor of the Kansas City Stock Yard Company; there was no difference except putting the plural onto the word yard.

Q. No difference except in the name?

A. No difference.

Q. The second company acquired the property of the company before it?

A. Yes, sir.

Q. At what time did it acquire it and take possession?

A. On January 1st, 1884.

Q. Yesterday you gave your testimony concerning the present value of the real estate of the existing corporation, the present value

of its improvements, and the present value of certain personal property which you described. State what, in your opinion, in
595 addition to those values, is the value to the stock yards company of the good will of the present corporation.

Mr. Boyle objects to the question as incompetent, irrelevant, and immaterial, not tending to prove any issue in this hearing, and for the further reason that it has no good will.

After hearing lengthy arguments from counsel for the parties, the master sustained the objection.

By Judge HORTON: We offer to prove by this witness that he knows the value of the good will of the Kansas City Stock Yards Company at the present time, and that in his opinion the value of the same is two million dollars over and above the actual market value of the physical property, including the grounds, improvements, and personal property which have been testified.

Q. You said yesterday that when you came here there was only a feeding station and now a market. What do you mean by that, Colonel Morse?

A. I mean that the stock then received, the bulk of cattle, was in transit to other places, to Chicago and St. Louis; that this was a convenient point for feeding; that the roads, many of them, terminated here that brought the cattle in from the points of shipment, and that they were unloaded, fed, and rested here, and then reloaded to go on through to destination; that was the condition then. The condition that I mean by a market is that the great bulk of all receipts of all kinds find buyers here, to whom the owners consider it to their interest to sell; that even in the case of shipments that are on through consignments to Chicago or St. Louis they all demand, in making their contract with the railroad company, the privilege of offering the stock on the Kansas City market, which, in a great majority of cases, results in a sale, so that the consignment stops here rather than goes through to the original point intended for destination.

596 And in answer to cross-interrogatories propounded to him by Mr. Boyle, attorney general, the witness testified as follows, to wit:

Q. Colonel Morse, you say that the present stock yards is a distinct and separate organization from the original stock yards company?

A. It is a distinct organization since January 1st, 1884.

Q. What is the difference between the personnel of the corporation; what is the difference between this company and the other one?

A. Simply that it was reorganized or reincorporated with capital sufficient to do what was necessary then in carrying on some improvements that were proposed.

Q. There was no change in the stockholders?

A. I couldn't say as to that. I think probably there was some change.

Q. Some old one- dropped out and some new ones came in, or did you simply sell some new stock?

A. It would be simply an impression. I could not say as to that.

Q. You have some way of ascertaining, haven't you, Colonel Morse?

A. I never had any direct charge of the stock transfers.

Q. Oh, well, you know, as the business manager of this institution, whether there — any changes of such an important character as that?

A. I know this, that the stockholders constantly change to some extent; there are some two or three hundred stockholders; some dropped out.

Q. Who were the principal stockholders when you took charge of the company?

A. Mr. Nathaniel Thayer, of Boston, was one of the principal one-.

Q. How much stock did he own, do you remember?

A. I do not.

Q. Go ahead.

A. Most of these gentlemen, I will say, that were the principal stockholders then are dead now, and their stock has been distributed and is in very different hands. William F. Wells, of Philadelphia, was one.

Q. What property had the stock yards company when you took charge of it? You were employed by the old stock yards company?

A. Yes, sir.

Q. What property did it own?

A. About 70 acres of land.

Q. Where?

A. Lying in what I call here the main yards. I think they owned nothing east of this line just in front of the building.

By the MASTER: Just give a little better description, so he
597 will get it in his notes.

A. It included the property bounded on the west by the Kaw river, on the north by the Union Pacific railroad grounds. Near the State line between Kansas and Missouri it had a narrow strip, not very much on the Missouri side of the State line, for a short distance south towards the Exchange building. From that point the State line was the eastern boundary until, as I remember it, it had passed by the Exchange building down to its southern boundary, which was Turkey creek. The property right across from the Exchange building then was two or three little saloons; then it also had on the north side a portion of this land. I could not tell, without referring to the records, just how much there was there. It had nothing at that time in the west side of the Kaw river. Its two tracts were really this part here that I described and a part of this over here; there were about 70 acres in the two tracts.

Q. That included this main portion of the yard here?

A. Yes, sir; that was the original yard.

Q. And which now constitutes a portion of the main yards?

A. Yes, sir.

Q. You only owned a small strip in Missouri?
A. A small strip only.
Q. Did you buy any of this property?
A. None of it.
Q. Who did, do you know?
A. Only by hearsay. I think it was bought by James F. Joy, who was — that time president of some of these railroads, and who got it for the purpose of railroad stock yards and organized and was one of the original incorporators of the stock yards company. I never have even seen the records, but that is what I understand.
Q. You don't know what he paid for that property?
A. I do not; no; it was some nominal amount, I think; not to exceed a thousand dollars an acre.
Q. That is this property here?
A. I think that is about what it sold for.
Q. Sold to whom?
A. To Mr. Joy for this stock yards company. I am not stating this from actual knowledge. I have not seen the records.
Q. Didn't you state here yesterday that the cost of this property here—eighty and some odd acres—was so much; how much did you say it cost the stock yards company?
A. I didn't testify to that 88 acres. I testified as to what this 22 acres cost.
598 Q. You said there was 86 acres. What was that?
A. 82 acres. I said that I valued that at the same rate per acre as we had paid for this 22 acres, which was $56,000 an acre.
Q. You paid for 22 acres $56,000 an acre, as an average price?
A. Yes; there was some higher.
Q. You say that this property which was bought here for what you described as the nominal sum of one thousand dollars an acre is now worth $56,000 an acre?
A. Yes, sir.
Q. Not that the stock yards company paid anything like that for it, but that it is now worth that by reason of the increase of value in consequence of the stock yards being there. Is that the idea?
A. This value that I gave on it is the value which I appraised it from its present condition.
Q. Well, that is by reason of the profitable business in which the stock yards company is engaged that gives it that increased value?
A. That is one of the reasons; the fact of its being right in the heart of a great city which at that time had no such conditions is another.
Q. Have you any way of telling, Colonel Morse, how much the stock yards company paid for the land up there?
A. By referring to the original records of the former company it could be ascertained.
Q. Where are those records kept?
A. I presume they are all in the vaults of the company, of the

present company. We have large vaults where these old matters are stored.

Q. Now, the stock yards company sold some land, didn't it? You sold about forty acres of land to different institutions?

A. You mean to these packing companies?

Q. Yes; and didn't you sell some to other institutions here? Did you sell some lands to the packing company?

A. Yes, sir.

Q. Where was that land situated?

A. I shall have to take that other map. It does not show on this map. It sold quite a large tract down at the mouth of the Kaw river.

Q. To whom?

A. To the Anglo-American Packing & Provision Company.

Q. How much did you get for it?

A. It was just the cost, if I have not forgotten. I think
599 it was somewhere about $15,000. The transaction was in these negotiations which I have testified in regard to. One of the conditions was that a sufficient site for the packing-house should be provided, and after the preliminary arrangements were made, it was agreed that that would be a satisfactory site, so the stock yards company went to work and bought that land and paid cash for it, and then put it in as part of the consideration to these packing-houses to establish here.

By Mr. DANA: What year was that?

A. That was either 1879 or 1880. I could not say certainly as to that.

Q. That was before you were identified with the company?

A. No; I was identified with the company in February, 1879.

Q. What other pieces of land did you sell?

A. In just a similar way we bought some thirteen acres over here.

Q. How much did you allow for that?

A. I think that was paid for at *at* the rate of about twenty-five hundred dollars an acre.

Q. You donated that to the packing company?

A. That was donated to the Kingan Packing Company.

Q. What other pieces of land?

A. Piece of land bought in here for Swift & Company, which comprised about fifteen acres; my recollection of that cost was about thirty-five hundred dollars an acre.

Q. You donated that to the packing company?

A. Yes, sir.

Q. On the list there was a piece of land over here where the Jacob Dole packing-house is.

A. Somewhere about there.

By Mr. DANA: On the Missouri river?

A. On the Missouri river. My recollection of that is that it cost about ten thousand dollars. That was donated in the same way.

Q. Of course, you can ascertain, which I now request you to do,

the actual prices of this property that you gave to these packing-houses. I ask you to secure that for me, Colonel.

A. I will do so.

Q. These different items of money that you say you paid out for these lands that you say you gave to these packing-houses is included in the five or six million dollars that you have paid out?

A. I testified that there had been paid out seven hundred and seventy-five thousand and some odd dollars for the purpose of establishing packing-houses, and the cost of this land, whatever it was, was a part of that amount.

600 Q. It is included in the cost of the buildings and the other property of the company?

A. It is included in the cost of the property.

Q. You donated $750,000?

A. I will give you the exact figures so as to be exact; it is $775,000 and odd dollars.

Q. When you say that you made but six per cent. upon that investment you include that $775,000 in the investment?

A. That was not my statement exactly. I said the company had paid in dividends an average of 6½ % since 1884.

Q. Upon what were those dividends based?

A. Based on the investment at that time.

Q. Well, did that include this $775,000?

A. Yes, sir.

Q. You bought most of this land down here yourself, didn't you, Colonel Morse?

A. Yes, sir; I had direct charge of the purchase of it.

Q. Don't you think that some of those people down there rather held you up a little on the price?

A. There are a few instances where that is undoubtedly the case, but the greater part of that property included in the last 22½ acres was bought with the absolute ignorance on the part of the persons selling it that the stock yards company had anything to do with it.

Q. There were a few instances?

A. There were a few instances where it was probably known who was buying and we were taken advantage of, but the great bulk of the purchases were made through channels outside of the company, and the prices that were paid were just about what the property had been held for right along; in fact, in some cases, I think, we got the property for less, because it was believed by a great many that it was a railroad coming in that would have the option of condemning if they did not sell.

Q. What personal property have you on the Kansas side?

A. We have our bank account in the Interstate bank, which is a variable amount; we have all of the office furniture, safes and everything of that kind which pertains to the offices, and not very much else. Most of the personal property connected with our stable business, etc., is on the Missouri side.

Q. About how much personal property have you in Kansas—just a general estimate?

A. You mean including the bank balance? That is very variable.

601 Q. No.

A. I think not more than ten or twenty thousand dollars; that is something I could get at exactly; it is something I do not feel very familiar with—the exact amount; it is not a very large amount.

Q. It would be up in the thousands, would it?

A. I think it would amount to several thousand dollars; yes, sir.

Q. But the most of your personal property—that is, the larger portion of it—is in Missouri?

A. I beg your pardon. I said that the office furniture and all that was in Kansas; that is not the case; we practically have no personal property belonging to the company except what is in the bank; our personal property in Kansas is just our bank balance and what tools and such things as that are about the yards—fire hose and things of that kind; there is very little personal property in Kansas; very little.

Q. It would not amount to a thousand dollars possibly?

A. I wouldn't say that, because there are implements of one kind and another that are scattered all over this large territory, at the hay barns, and one thing and another that would take an inventory to get at their value.

Q. But it could not possibly run up into the thousands at all?

A. Not many thousands, I should not say.

Q. The most expensive real estate you have is on the Missouri side, is it not—that is to say, that you paid the most for—the most money that you have invested in real estate has been the real estate that you purchased in Missouri?

A. If you consider what money is invested in any of this property, it is as valuable as this.

Q. I know; but you paid out more money for the Missouri real estate than you did for the Kansas real estate?

A. The purchase price was larger; yes.

Q. A great deal larger?

A. Very much larger. There has no Kansas property been bought for many years except a small piece on the west side of the river. I will state right in that connection that the Kansas property or the property in Kansas that has been bought in the north yards in the last five years has averaged not less than thirty thousand dollars an acre, all of this in this main tract, with the exception of this along the river which I spoke of in my direct testimony which I valued at ten thousand dollars, some of which cost eighteen thousand dollars an acre.

602 Mr. DANA: Your last answer refers to the north yards, north of the Missouri Pacific railroad?

A. Yes. When the question was asked I thought he referred to the yards over here, as to the land purchased in Kansas; but that was all in Kansas, part *part* of the yard.

Q. Colonel, I have here the tax receipts of the Kansas City Stock Yards Company, showing the amount that they paid as taxes to

the county of Wyandotte for property owned in that county. Not being familiar with the metes and bounds as they are located here, I will ask you to assist me in locating the different pieces of property, if you can, that are indicated by these tax receipts.

—. All right, sir.

Q. Here is the south fractional half of the southeast quarter of section 17, town 11, range 25, containing 74 acres?

A. I could not answer that from these section and town descriptions I have never been familiar with it in that way.

Q. Is that property on this map at all?

A. 70 acres?

Q. 74 acres.

A. It must be, because that would be more than we have anywhere else; it would have to be on this map; all the property in Kansas is here.

Q. I have here the fractional half of section 20——

By Judge HORTON: Wait a moment. The fact that somebody with whom we had nothing to do assessed this property is no evidence of its value at all.

By Mr. BOYLE: It is one of the things that goes to show value. If they made a return of the value of their property to the officials of Wyandotte county and put a value on it themselves it is competent evidence.

By Mr. DANA: You ought to know the laws of Kansas well enough to know that the owner of the property does not make any return at all.

Q. You have not paid taxes upon any amount of property that you claim that you have in Kansas?

By Judge HORTON: We have not offered any evidence that they have ever paid it; and the fact that they did not pay a dollar of taxes would not make any difference in this case.

Q. Here is the question which I desire to ask. I will with-
603 draw the other question. I will ask Colonel Morse now to state whether or not the Kansas City Stock Yards Company ever paid taxes on any such valuation as he puts on this property. I leave it for the court to rule upon whether it is a competent question or not, to show, as one of the items that goes to make the proof, whether or not this property is worth any such price as they claim it has.

By Judge HORTON: We object to the question for the reason that the company does not pretend that it made any return of the value of its property, and, secondly, because there is no showing that the assessor who made the assessment had any knowledge or knew anything about the value of the property when he assessed it.

By the MASTER: I think the question is proper.

Q. How much taxes did you pay last year on this property?

A. I have the taxes in one item, $22,671.25.

Q. That is Kansas and Missouri both?
A. Yes, sir.
Q. Do you know how much taxes you paid in Kansas?
A. No, sir.
Q. You can ascertain?
A. Yes, sir.
Q. I wish you would do so if you can. Have you got it in your book there?
A. No; but I can get it this noon.
Q. Do the deeds that are on record in Kansas City, Missouri, and in Kansas City, Kansas, in the proper public offices, record the prices that you paid for this property, Colonel?
A. I think not; I think only in part of the cases. I think in many cases the consideration was made nominal; in some cases the full consideration was named, possibly; in some only part of it. Some of it was made simply a dollar consideration.
Q. The deeds on record in the register's office in Wyandotte county, Kansas, show that the company paid out $245,684.45 for land in Kansas; that the company received forty thousand dollars for land sold in Kansas, leaving $206,844.45. Now, does that express approximately or in any intelligent way what you actually did in the way of expending money or receiving money for land?
A. I could not say. There was a very large part of that area that was bought in before my time that I know that was bought at very low prices, but I should think that that is not anywhere near what would be represented by the first cost.
604 Q. We can ascertain that by an examination of your books, can we not, Colonel?
A. You can learn the cost of all the land; yes, sir.
Q. The records in Missouri indicate that you paid out $1,318,486.49. Does that in any way express the actual price paid?
A. That would express a large part, but in that case, I think, there — quite a good many transactions which only express nominal considerations.
Q. You have a record, of course, of what you have actually paid for this land in Missouri, haven't you?
A. Yes, sir.
Q. For each lot separately?
A. Yes, sir.
Q. I will call your attention now to one or two transfers, and possibly you may be able to verify or dispute the record as it is indicated here. Do you remember a transfer from Frank M. Spencer and Flora Spencer, his wife, to Nathaniel Thayer, Jr.? Who is Nathaniel Thayer?
A. He is a gentleman in Boston who is a stockholder in the company.
Q. What has he got to do with these transfers with reference to the purchase of these lands?
A. In very many cases the purchases were made by individuals and the original transfers were made to them. It could not be done by the stock yards company to so good advantage.

Q. And they would afterwards transfer the title to the stock yards company?

A. Yes, sir.

Q. Would they get any consideration for it?

A. No, sir.

Q. In this instance there was paid $1,375. Do you remember that?

A. What was the date?

A. This was back in 1879.

A. I don't know where the land lies.

Q. When did you make these last purchases here?

A. I think most of the last purchases were made in the years 1892, 1893, 1894, and 1895, but the most of them in 1893 and 1894.

Q. Here is one from Daniel D. Brackett and Georgiana A. Brackett to Joseph A. Stearns. Who was Stearns?

A. He is a Boston gentleman.

Q. He is from Boston; he is a stockholder?

A. Yes, sir; I think so; I am not sure that he is, but he is a Boston man, I know.

Q. If he was not a stockholder, then he would be paid a consideration for doing the work; he wasn't sent out here to do it for nothing?

A. I presume that is another case such as you read before where there was a nominal purchaser.

605 Q. Do you remember this transfer: $4,000, lot 3, Sciles & Western addition to Kansas City, now Kansas City?

A. What was the name of the party that sold?

Q. Brackett.

A. Only as one of the names; I don't remember particularly about it. There were a great many names of different owners through there.

Q. I want to see, as you have the record and it can be secured, the prices that were paid for these different pieces of property in Kansas City, Missouri, that were purchased in this addition—this last block—and we will compare those with the prices that are indicated by the public records. Now, what property do you own there other than this hotel that is not used directly in the stock-yards business? Do you own any other buildings over there?

A. There were a few buildings that were on this Missouri property at the time the property was bought that had leases that expire this year. On all of those buildings we still collect rents that are stated in our rent account yesterday, and there are a few small buildings, I think, on some of the corners of this land over on the north side which are out of the yards; just shanties, practically.

Q. You paid a good deal of money for the property upon which those shanties are standing?

A. Yes, sir.

Q. How much have you paid for that land?

A. I think for the land that we have bought in the last four or five years we have paid for at the rate of one hundred dollars a

front foot, or more. I don't remember of any less than that, but there may be some cases where we paid a little less.

Q. What did that hotel cost you?

A. In its present condition, I suppose you mean. We have built it practically from a small, low building.

Q. What has it cost you up to the present time?

A. My impression is that it stands us something over sixty thousand dollars.

Q. Well, is that money included in your investment in the Kansas City stock yards?

A. Certainly. That pays a return on itself, so that it takes care of itself. The money invested there receives its income there and that goes into the earnings; so it does not affect one way or another the operation of the yards.

606 Q. These store buildings, what did they cost you?

A. The entire buildings on all this tract in Missouri, as near as I could figure it out, represent about fifty thousand dollars in cost, and I think this building here——

Q. (Interrupting.) That is, land and all?

A. No; I mean just the buildings.

Q. I mean the land upon which they stand and the buildings; the whole business.

A. You refer to these down near the Exchange building?

Q. Yes; that are not now being occupied as stock-yards property, that are being rented as stores, hotels, etc.?

A. I could not state exactly, but I think it was somewhere from seventy-five to one hundred thousand dollars.

Q. That you paid for that property?

A. Yes, sir.

Q. When you spoke of sixty thousand dollars for the hotel, did you refer simply to the building or to the land and building?

A. No; the cost of the land and building.

Q. How much did you say there was?

A. I think somewhere from seventy-five to one hun[illegible]d thousand dollars.

Q. That refers to all the property that is now being occupied by hotels and stores?

A. Yes, sir; property that is rented now.

By MASTER: Including this hotel?

A. No; the hotel is regularly a part of the stock-yards property which will remain; these other buildings will be removed as soon as the leases expire.

Q. What do you receive a year rents for the hotel?

A. Six thousand dollars.

Q. And for the stores?

A. For the stores collectively, I think about two or three thousand dollars.

Q. What interest are you making on your investment in these stores of seventy-five thousand dollars?

A. It would not be more than four per cent. on those particular buildings, I should think.

Q. You lease this building, do you? This hotel building?
A. Yes.
Q. Are you a stockholders in the Kansas City Stock Yards Company?
A. Yes.
Q. How much stock do you own?
A. I own 325 shares.
Q. What is it worth a share?
A. The last sales that I know of were, I think, about $1.15.
607 Q. Are there any shares now for sale that you know of?
A. I presume so, but I don't know of any: there are always some on the market, sometimes here and sometimes in Boston.
Q. What has become of the profits of this institution? Where have they gone, Colonel?
A. When you speak of profits you mean the net earnings of the company?
Q. Yes.
A. Since 1884—that is, thirteen years to the first of last January—there have been divided, as I stated in my evidence, an average of six and one-half per cent. We have invested from the earnings in the thirteen years $1,437,882. That would have amounted to about 3% on the stock in that time.
Q. How did this increase in the capital stock take place?
A. The stock was increased in the year 1887, January 2nd, from two and a half millions to five millions of dollars.
Q. The first increase was in 1877, was it not?
A. This company was organized with a capital of two and a half millions in 1884.
Q. The capital was increased in 1887?

By Judge HORTON: That was before he was there.

Q. You don't know anything about the increase of the capital stock in 1877 by the old company, Colonel?
A. No, sir.
Q. You don't know there was an increase made at that time, the year before 1878?
A. Only from hearsay. I have never seen the records and have never had any direct knowledge of it.
Q. You didn't own any of the stock of the company at that time?
A. No, sir.
Q. In 1878 they increased it from two and a half millions to how much?
A. In 1887, January 2d, 1887, it was increased from two and a half millions to five millions.
Q. When the new company was organized they bought up the stock of the old company, did they, or what did they do? How did they effect that purchase?
A. It was paid to the stockholders of the old company. There was $1,990,000 paid for the property of the former company at

the time of the organization of this company January 1st, 1884; $1,990,000.

Q. How many shares of stock had been issued?

A. I suppose 19,900. They were issued at par.

608 Q. In 1884?

A. Yes, sir.

Q. Now, in 1887 was the first increase?

A. It was made January 2, 1887, from two and a half to five millions of dollars.

Q. What was the occasion for that increase of capital stock?

A. The company had then begun to make its first large purchases of land and to practically rebuild the main yards. They have been rebuilt twice since that time, but the first rebuilding was in 1887. Nearly everything that was there was torn out, the yards regraded, a different arrangement of railroad tracks made. The railroad tracks were all laid by the company the first time in the main yards. Almost everything was entirely changed. Some large additions were made to the exchange building, and other improvements were made.

Q. Were there two and one-half million dollars of improvements made?

A. No, sir. I will give you two or three figures, which will perhaps give you some information. The capital stock in 1884 was $1,990,000, which the company had paid as representing the cash value at that time—the capital stock which was issued in payment for the property. There has been stock sold for cash at par from 1884 up to December 31, 1887, $2,759,516.

By Mr. LITTLE: Does that include that $1,990,000?

A. No, sir. Those items make $4,749,516. There has been invested from the earnings of the company, in cash, $1,437,882 within those same periods, making a total cash expenditure of $6,187,398. That represents the cash investment.

Q. What did you pay for your stock, Colonel?

A. I paid par.

Q. For 325 shares?

A. No, sir; I bought and sold stock since then, but my purchase——

Q. (Interrupting.) What was your original purchase?

A. Originally, I had fifty shares.

Q. What did you pay for that?

A. I paid par for it.

Q. What was it worth a share?

A. Well, I don't think it was worth more than par at that time. It had not a market value. I took it when I first came to the company to have a small interest in the company.

609 Q. Since then you have acquired some two hundred and odd additional shares?

A. Yes, sir.

Q. You have had to pay out, then, large sums of money over and above what your shares have earned you?

A. Yes, sir.

Q. The investment of the *of the* stockholders in the Kansas City Stock Yards Company has not been a paying investment?

A. Yes, sir.

Q. How?

A. It *is* always paid a fair dividend.

Q. You have put in more money than you have got out, haven't you?

A. We have put more cash in than—I will give the amounts put in. The total put in is $4,749,516; that is from the sales of stock.

Q. What was done with the money?

A. That has all gone into the property. You have asked me the question whether they put in more than they have taken out. That is exactly the fact. The total dividends in cash to the present time do not represent the amount of actual cash capital paid in by the stockholders.

Q. What have your shares netted you during those years from 1887 up to the present time in earnings?

A. Well, it has been just about the rate of dividend paid. They have earned about six per cent. I want to have you perfectly clear in this matter. This capital, you understand, formerly $4,749,516, represents the stock for which the stockholders have paid dollar for dollar. As I stated, there has been a certain amount invested from the earnings, and there has been a certain amount which has been issued from time to time covering these thirteen years which has represented from time to time the increase of the value of the property. Now, those two items of $1,437,882, which would represent some two or three per cent., nearly three per cent., of the stock in that time, has been issued in the form of stock—that is to say, the stockholders did not receive that in money. That might have been divided in money. It is invested on the property.

Q. And stock issued on it?

A. Stock is issued on it.

By Mr. LITTLE: What is the amount?

A. $1,437,882. Now, the other amount which I gave, $1,181,252, is not represented in the cash investment in the property. That $1,181,252 represents the increased value of the land.

Q. On which stock was issued?

610 A. On which stock was issued from 1884 up to the present time.

Q. How much do those two items figure, Colonel?

A. The total stock issued is $7,368,650. Those two items amount to $2,619,134.

Q. Do I understand that the only earnings that have been invested in stock—that is to say, represented by stock—is $1,437,882?

A. Yes, sir; that is the exact fact; from 1884 to the present time.

By Mr. LITTLE: That was all invested by December 31, 1887?

A. Between January 1st, 1884, and December 31, 1896; 13 years.

Q. When did you make this last issue that you referred to by reason of the increased value of the land?

A. I think all of that that was issued for the increased value of the land was in the year- 1884, 1885, and 1886; at least, 1885, 1886,

and 1887; those three years. It was in those three years that the greatest increase in the value of property in Kansas City took place and the largest increase in population.

Q. You increased your capital stock by reason of the increased value of your property over a million dollars, while you were charging a less rate per head for cattle than you are now charging. Is not that a fact?

A. That is a fact; that was issued for that increased value of the land at that time.

Questions by Mr. LITTLE:

Q. Do I understand you to say that from January 1st, 1884, to December 31, 1887, you issued stock, in addition to the original $1,990,000, to the value of $2,759,516?

A. No; you do not get that quite right. What I said was that between January 1st, 1884, and December 31, 1896, there was sold for cash at par stock to the amount of $2,759,516.

Q. You got the money for that?

A. That was actual cash; an actual cash transaction at par to the stockholders.

Q. This $1,437,882 was issued to your stockholders *pro rata?*

A. Yes; that was the amount which had been taken from the earnings in those thirteen years, and that was equivalent to giving them the stock.

Q. That is, a dividend?

A. It was just the same as if they had taken it in cash; as if they had declared everything that had been earned. That would have made about nine per cent.

Q. You did not speak of that?

A. Yes; I told Mr. Boyle that that amount which was in-
611 vested in the property there was represented in stock issued to the stockholders at par.

By Mr. BOYLE:

Q. Now, that is not all the profit that this company has made, that $1,437,882?

A. That represents every dollar of profit; if you add that to the dividends paid from 1884 to December 31, 1896.

Q. You have received no dividends at all since that dividend was turned into stock?

A. There has been no stock issued except what has represented the actual cash investment in money, with the exception of that amount, $1,437,882.

Q. Actually represents the lands, also what you invested as dividends?

A. To be perfectly clear, this $6,187,398 represents the cash cost—that is, what had been put into the property. This $6,187,398 was derived from the sale of stock, amounting to $4,749,516, and the application of earnings to the amount of $1,487,882; that is the cash in the property. The difference between that cash in the property and the present capital stock of $7,368,750 is $1,181,252, which,

I say, has been issued to represent the increased value of the land, and all of that, I think, was issued prior to 1888. Since 1888 every dollar of stock is represented by a dollar's worth of property in cash.

By the MASTER: The original purchase from the other stock yards company was $1,990,000?

A. Yes, sir.

By the MASTER: There was no other money paid by the new company at the time of the purchase into the treasury?

A. No, sir; that included some money; I couldn't say how much. That $1,990,000 included whatever money and property there was at that time.

By the MASTER: Belonging to the old company, which was purchased by the new?

A. Yes; it purchased their accounts and franchise, money on hand, and whatever there was.

By Mr. BOYLE: I understand that before you made this last purchase in Missouri that this plant cost you people $6,187,398?

A. Oh, no; I said that is the cost right up to the very end of last year's operations.

By Mr. DANA: Up to December 31, 1896, he said.

A. That is the amount which would be shown as our investment.

By Mr. LITTLE: I did not catch *was* was invested down to 1888.

612 A. I said that this amount—the exact figures, $1,181,252—which was issued to represent the increased value of the land, was issued prior to 1888.

By Mr. LITTLE: That is in addition to the $1,437,882 increase?

A. Yes; this last item of $1,181,252 was not cash; the other item was cash.

Q. That was issued to the stockholders?

A. Yes.

Q. That was a dividend, too?

A. Yes; it represented to them the increased value of the property at that time. It was not all at one time; it was at different times during those years—1885, 1886, and 1887.

The hour of 12.30 p. m. having arrived, the master arose and the hearing of testimony was adjourned until 2.00 o'clock p. m.

Afternoon session.

Taking of testimony resumed.

Colonel MORSE on the stand.

Cross-examination continued by Mr. BOYLE, attorney general:

Q. We will finish with this issue of capital stock before we pass to the information that you secured during the noon hour. Have you the information with you now as to who constituted the principal stockholders in the old company and in the new company?

A. I can give you probably six or eight of the more prominent stockholders that were in both companies.

Q. Well, they were in both companies?

A. They were in both companies.

Q. When this $1,990,000 of stock was issued, in 1884, to this new company?

A. Yes, sir.

Q. That stock was given to the members of the old company to represent the value of that property, or what you gentlemen were pleased to put as its value?

A. That is right; that amount was paid to the stockholders and owners of the property for the property.

Q. There was no money paid out by the stockholders of the new company for the property to the stockholders of the old com-
613 pany; I mean actual cash?

A. I think not, at that time.

Q. Now, will you tell me what constituted the stock-yards property in 1884. Refer to this map.

A. I won't say that I can do it accurately, but I can give the principal part, I presume.

Q. Will you tell me what data you have in your office that would give it absolutely accurately?

A. Our land ledger, which shows our land and when we became possessed of it.

Q. Indicate that, as nearly as you can, please.

A. We owned, in the first place, everything west of the State line to the Kaw river and south of the Union Pacific tracks; that would be this land; either we owned then or we bought within that year, or a year or two, part of the property lying west of what was then Bell street, but not all of it, to what, I think, was 15th street; it lay in here some place; some parts of the property were low, west of the alley to the State line, in these blocks. I don't think we had any property east of the State line then, except a part of this that lay in the north part, where at that time there were mule stables and some cattle pens. On the north side here, it would be impossible for me to remember exactly what it was, because the property has been bought lot by lot there. I can only say we might have had, perhaps, two-thirds of that property at that time.

By the MASTER: What time are you speaking of?

A. 1884.

Q. At the time of the organization of the stock yards company?

A. That is my impression. It is my recollection that we owned altogether then about 100 acres that we had acquired at different times from 1879 to '84, before this company was organized—some thirty acres which were not owned in 1879. I am not perfectly clear about the date of the transaction of buying the quarantine yard land. I think it was later than 1884. I think we owned no property on the west side of the Kaw river at the time *time* the company was incorporated.

Q. Do I understand you to say that the stock yards, as they then existed, cost $1,990,000?

A. Yes, sir.
Q. That much money had been invested in the stock yards?
A. I do not say that. I say that represented the cash value.
Q. At that time, as you estimated it?
A. Yes, sir.
614 Q. But you do not mean to say that that much money had been invested in the property?
A. No, sir; I do not say that.
Q. $1,990,000 of stock was practically issued to the same stockholders who constituted the old and the new corporations?
A. Practically the same; yes, sir.
Q. And if there had been no change in the name it would have been practically an increase of the capital stock of the old company, would it not?
A. It would, of course, have been an increase of the capital stock of the old company to that amount.
Q And an increase which would have been made without the then immediate expenditure of any money?
A. At that time, when the company was incorporated; yes, sir.
Q. That is what I mean.
A. Yes, sir.
Q. How much capital stock has this new company sold for which it has received any money since it has been organized as a company?
A. It has sold for cash, at par, $2,759,516. That is the only stock that has been sold on the market for which money has been received; yes.
Q. Do I understand you to say that all of that stock was sold on the market?
A. Yes. Well, I don't know as I understand exactly what you mean by on the market. Whether it was put into the hands of brokers for sale?
Q. No; I don't mean that. I mean it was issued and subject to purchase.
A. It was offered for sale, and it was sold for cash to that amount.
Q. The men who owned the principal portion of the stock in the stock yards company purchased that stock also?
A. As a rule, the stock was bought by the stockholders of the old company, though I am not able to say that it was, every share of it, bought that way, but it was offered to the stockholders first.
Q. And the majority of it bought by them?
A. So far as they cared for it, they had the right to take it and pay for it.
Q. That is the only stock you have sold, is it not?
A. Yes; the only stock that has been sold for cash.
By Judge HORTON: Of the new company?
A. Yes.
Q. What was done with that money that you received, $2,759,516?
A. Well, it would only be possible to answer that ques-
615 tion by going through the detailed transactions. Of course, everything that is paid for by the stock yards company is

represented by a voucher. It would be in the form of land, improvements, money paid for work of all kinds in the construction of the yards, grading, railroad tracks, and a hundred things.

Q. Riprapping?

A. Riprapping; everything which has contributed toward the physical property that the company owns.

Q. A good deal of this money has gone into the construction of pens that have been reconstructed in later years?

A. Yes.

Q. In the construction of buildings that have been reconstructed in later years?

A. Yes, sir.

Q. In other words, a considerable portion of this money has been invested in improvements that have served their purpose, and are now replaced by other improvements; isn't that true, Colonel Morse?

A. What would be exactly the fact is that these improvements have been maintained ever since they were first constructed, and, whether they have been replaced once or twice, they are there today, and represent at least as much as went into them at the first construction.

Q. I say that every dollar of money that you have put into these improvements, whether the improvements have fallen into decay or have been replaced or not, is represented in this amount of money, is it not?

A. Yes, sir.

Q. And upon which you now base your capital stock of sev- million and some odd dollars, and upon which you claim you are entitled to a reasonable return; is not that true?

A. That represents part of the expenditure; yes, sir.

Q. Now, that $1,990,000 and $2,759,516 make only $4,749,516.

A. Yes.

Q. Now, this $2,759,516 worth of stock was not issued all at one time, was it?

A. No, sir.

Q. When was this $1,181,252 issued that was issued by reason of the increase in the value of your land?

A. That, I think, was all issued in the years prior to 1888; possibly in 1888 and the years preceding.

Q. Now, was any of that stock issued prior to the issuance of your $2,759,516?

A. Some of it; yes.

Q. You say that was issued prior to 1888?

616 A. I think that it was all. I haven't the dates here of the issue, but the investment in the property since 1888, including 1888, represents, in actual money, all of the money which was received from the sale of stock; also all the money which was put in from net earnings, so that is the way I figured that out.

By Mr. LITTLE: Do I understand this was all put in since 1888?

A. No; prior to 1888.

Q. What do they call that stock, watered stock?

A. No, sir; that is represented by what we regarded as full value in the value of the land.

Q. The increase in the value of it?

A. Increase in the value of the land.

Q. By reason of the increase of the value of the business?

A. And the value of all other property of a similar kind.

Q. But there were no other stock yards——

By Judge HORTON (interrupting): He means real estate.

By Mr. BOYLE: You need not tell him.

Q. Now, the $1,437,882; when was that issued, Colonel?

A. That was issued from time to time during the last eight or ten years.

Q. That represents dividends, don't it?

A. Yes, sir—that is, just precisely the same as if it had been taken and paid out in cash as dividends to the stockholders and that amount of stock had been sold at par and they purchased it. It would have been just the same transaction, so far as money is concerned.

By the MASTER: When did you say the $1,437,882 was issued?

A. That has been at various dates running over eight or ten years. I haven't the exact dates here; from 1888 to 1897.

By Mr. LITTLE: That has all been issued since 1888?

A. Yes; I think all of it. I think about twelve hundred thousand was issued prior to 1888 and this balance since then. Those are not the exact dates, but I think that is what the records will show.

Q. Now, you say that the dividends of this company have run, since you have had charge of it, from five to nine per cent. at different periods.

A. Yes.

617 Q. When was it nine per cent.?

A. I would have to get the records to find that. I haven't the record of that. I think there is one year in which it was nine per cent., but I could not give the year that that occurred.

Q. Was there any stock issued that year?

A. I couldn't say that, either.

Q. Sir?

A. I haven't the information here. I cannot give the fact from certain recollection, if I should testify.

Q. Did the amount of dividends that the company was receiving have anything to do with the issuance of the capital stock, Colonel?

A. No, sir; nothing whatever.

Q. Are you a stockholder in this Kaw Valley Townsite Company?

A. Yes; I have some stock in it.

Q. Has Mr. Adams any stock in it?

A. Yes.

Q. How many stockholders are there in that institution?

A. I don't know, but I think not to exceed forty or fifty. I haven't seen the stock list for a long time.

Q. Are there any of the principal stockholders in the stock yards company that are not stockholders in that company?

A. Yes; there are some.

Q. How does it come that the stock-yards employés do the business of that company?

A. Simply as a matter of convenience. The work is not very difficult, has not been for the last ten years or so, and it is more convenient to do it that way.

Q. What is the capital stock of that company?

A. $325,000.

Q. How much stock do you own in it?

A. I own twenty shares.

Q. What is the business of that company?

A. Selling land.

Q. Has it sold any land to the stock yards company?

A. Only one piece, which was afterwards sold to one of the packing companies.

Q. One of those pieces that you donated to the packing company?

A. Yes, sir.

Q. How is that stock, at par?

Judge Horton objects to any inquiry into the affairs of the Kaw Valley Townsite Company further than is necessary to show
618 its connection with the Kansas City Stock Yards Company or its employés. The question was not answered.

Q. Are you identified with this other corporation that has been referred to, the dessic-ating company?

A. Yes; I have a nominal connection with that company.

Q. What is that connection?

A. I have the title of manager, but I have nothing whatever to do with its operations or business.

Q. No emoluments?

A. No, sir.

Q. Are you a stockholder in it?

A. I am a small stockholder.

Q. The business of that corporation is done in the stock yards company's office, is it not?

A. Yes.

Q. They have the exclusive right and privilege of using the animals that die in the guarantine yards, have they not?

A. No, sir; it has no exclusive privilege whatever.

Q. They are the only persons who take dead animals out of there?

A. As a matter of fact, that is so at the present time. There have been times when there have been other companies doing it.

Q. That has been shut off?

A. No; it has been shut off from the fact that there is no profit in the business, and they closed their places up.

Q. This company is not running simply as a gratuity?

A. It is running on the smallest minimum profit on which the place can be kept going. The clerk who is employed by the company to keep the books of the company has a desk in the office of the stock yards company. The business office, where all the busi-

ness of the company is transacted, is rented from the stock yards company, and pays rent there like other people in the Exchange building.

Q. But the dessic-ating company pays no office rent for this cashier's services?

A. No, sir.

Q. Nor does the Kaw Valley Tosnsite Company pay any office rent?

A. The business of that company is transacted by a real-estate firm in the city, and this work that is doen by the stock yards company is merely keeping a set of books there.

By Mr. DANA: I understood that the keeping of those books is by a clerk, who is paid for it by the Kaw Valley Townsite and Bridge Company.

619 A. Yes; but this was answering the question as to whether the company paid anything for the office rooms.

Q. Who constitutes the board of directors of the stock yards company?

A. There are eleven directors.

Q. Give their names, please, as you go along.

A. I will try to remember them. In the first place, being a Kansas corporation, there are three citizens of Kansas, if I am right on that—Major Drought here, Gen. C. W. Blair, and L. E. James.

Q. That is Lewelling James, the attorney?

A. Yes. The other directors are Charles Francis Adams, Nathaniel Thayer, John W. Burnham, Charles Merriam, H. H. Hunnewell——

Q. Charles Merriam is your financial agent?

A. Yes. I am a director, and there is one vacancy at this time—a gentleman died.

Q. Is Mr. Blair a considerable stockholder in your company?

A. No; he is not a stockholder at all.

Q. Mr. Lewelling James a stockholder?

A. No, sir.

Q. And Mr. Drought?

A. No, sir; there are none of them stockholders.

Q. None of them are stockholders that live in Kansas?

A. No, sir.

By Mr. LITTLE: Any stock held in Kansas?

A. I don't know of a share.

Q. The other eight members, most of them live in Boston?

A. There — five who live in Boston. I live in Kansas City, and one vacancy.

Q. These five who live in Boston, with yourself, who lives in Kansas City, constitute the principal stockholders of this corporation?

A. Oh, no; not at all.

Q. Isn't Mr. Adams a heavy stockholder?

A. Yes; those 5 gentlemen that I have named are all large stock-

holders, but they do not own a majority of the stock. There are over two hundred stockholders in the company.

Q. I do not mean to say that they constitute a majority of the stock, but they are large and influential stockholders?

A. Yes; probably they are the largest—the five largest stockholders.

Q. This board of directors is the body that determines upon the issuance of new stock?

A. Yes.

Q. What service does Mr. James perform for this corporation?

620 Q. He attends to all the legal matters that we have occasion to consult him upon in Kansas.

Q. Such as what, for instance?

A. We have a good many small claims—damage claims, claims in replevin suits, and things of that sort.

Q. Does he go into court for you?

A. Not ordinarily.

Q. Has he appeared in court at all for you?

A. I think not. I think when we have required anything through court we have always done it through other attorneys.

Q. Who is that?

A. Pratt, Dana & Black.

Q. You pay them extra compensation, of course, when they do any services?

A. Yes, sir.

Q. They are on the pay-roll, but that is a mere nominal sum?

A. Yes.

Q. Simply as a retainer, so to speak?

A. Yes; that is it.

Q. You pay them whatever their services are worth when the occasion arises?

A. Yes, sir.

Q. Mr. Lewelling James is not employed in the defense of the company or its stockholders in this investigation, is he?

A. No, sir.

Q. Do you have personal supervision over all the moneys that are paid out by the stock yards company?

A. Practically all of it; yes, sir.

Q. What part don't you?

A. I do not have charge or supervision of the payment of the dividends.

Q. Who has that?

A. That is done under the direction of the board of directors, through Charles Marriam, in Boston.

Q. What other item?

A. Only very small items of office expenses that they have there from time to time.

Q. They maintain an office in Boston to run these stock yards in Kansas, do they?

A. They maintain an office; yes.

Q. Has there been any money expended by the Kansas City Stock Yards Company for any purpose other than employing stock-yards men, stock-yards employés, and the natural repairs that are necessary for that company at any time?

A. That is a very comprehensive question to answer in a short way as your question requires, but all I can say is that all the money that has been paid has been directly for stock-yards purposes, and the vouchers show exactly what everything is paid for. Of course there are a thousand items that go into the operation of the yards.

621 Q. You only have this firm of Pratt, Dana & Black and Mr. James on the rolls as attorneys for the stock yards company?

A. That is all; yes.

Q. Those are the only attorneys you employ?

A. Those are not the only attorneys. I couldn't say that we had not had other firms. We have had firms in Kansas City at different times. Hutchings & Keplinger have done service for us.

Q. You have no legal adviser in Boston?

A. No; the board may at times have called in advice, but we had none that was regularly employed in that capacity in Boston.

Q. Now, we will come to this question of taxation. What have you been able to find, Colonel Morse?

A. The information that I have received about the taxes is that the amount paid in Kansas for the year was $12,021.18, and in Missouri $10,650.07; total, $22,671.25.

By Judge HORTON: That does not take in the special taxes?

A. No; those are general taxes.

Q. That constitutes all the taxes that you have paid upon this property that you value in the neighborhood of $7,500,000?

A. Those are all the taxes we paid in the year 1896.

Q. What do you pay for water per year over there; what does it cost you?

A. I do not think I have that information here in detail. It is included with a number of other items.

Q. You testified before the committee about $25,000?

A. That would be my recollection; about $25,000; between $20,000 and $25,000.

Q. You built water works over there, did you not, of your own?

A. Yes.

Q. You put how much money in that?

A. I think that has cost us some twenty or twenty-five thousand dollars.

Q. Didn't it cost more than that, Mr. Morse?

A. I wouldn't say it had not; I haven't the figures with me.

Q. That is some more of the money that has been invested out of the two million dollars' worth of stock you sold?

A. Yes.

Q. What do you use that water works for?

A. The water-works plant includes a heating and lighting plant;

it is a power plant. The water is simply an auxiliary supply at this time. We do not find the water very satisfactory.

622 Q. That is, you cannot use the water for stock purposes?

A. The stockmen don't like the water.

Q. It was not healthful?

A. It was perfectly healthful, yes; there was no difficulty on that account, but their argument was that it was a little discolored and the cattle wouldn't drink it as freely as they would clear water, and we didn't try to force it on them; the plant now is used mainly for heating and lighting and as an auxiliary fire protection, which is a very important thing.

Q. You put an item down here of $75,000 for brick, didn't you?

A. Yes.

Q. Now, that is vitrified brick, is it not?

A. Yes.

Q. That is almost a permanent investment for these stock yards, is it not?

A. We don't know yet; we are going on with the experiments with it. The first of it has been in some four or five years, and it will take some five or six years, at the rate we are putting it in this year, to complete everything; perhaps we will be able to put it in in less time than that; the experience in the street service is that it will last from eight to ten to twelve years, and some of our wear is about as heard as in the ordinary street; some is not nearly so hard. It is liable to last us anywhere, I think, from twelve to eighteen, and possibly more, years; we cannot tell without any similar experience to our own.

Q. That is an item of expense that, after you have completed your floors, you will not have to repeat every year, is it not?

A. We hope not; it is replacing now the plank which have lasted only a comparatively short time, and we hope to get something that will last longer.

Q. Whenever you make an experiment over there, where you put in stone or plank, and it does not prove a wise investment, you don't lose anything by that, do you? That goes right into the general capital upon which you have based everything that you want these people to pay returns to you on?

A. No, sir; if it — a renewal it does not go into the general capital.

Q. Renewal of what?

A. It is a renewal of some other material that has given out.

Q. I know——

A. For instance, this planking which we are replacing now.

623 Q. But that item of expense goes into your bill of complaint here.

A. Of course, it comes out of our earnings; we have to use that money; we can not avoid that.

By Mr. LITTLE: Take that $75,000 for vitrified brick. Has that become part of the property upon which you want to draw interest, or is it an item of expense which you subtract from your gross receipts?

A. It is an item which we subtract from the gross receipts; of course, the original value of the property, what it replaces, is part of our original investment, and in the valuing of the property, if we have got something better today than we originally put in, it has increased the value of the property to that extent.

By Mr. LITTLE: You want to draw interest upon the increased value of the property?

A. Yes.

By Mr. BOYLE: And at the same time charge it up as an expense which you seek also to offset against these rates that these people fix?

A. Well, it is charged as an expense, but in valuing the property we take the property just as we find it and value it.

Q. How much does that $75,000 worth of brick paving increase the value of the property?

A. It depends entirely on how durable it will prove, as a matter of course; it is not much more costly than plank; I think there is a difference of only 20 or 30 cents a yard; something like that.

By Mr. LITTLE: You do not answer my question, or I did not make myself clear. How much does it increase the value of the property, in your judgment?

A. I would say that the brick was worth twice as much as a floor as the plank, from the experience I have had with the two.

Q. You mean that you have increased the value of the property $37,500?

A. I should think that would be a proper and fair estimate of it.

Q. You want $75,000 subtracted from the gross receipts and expenses, and $37,500 added to the value of the property, upon which you are to draw interest; am I right?

624 A. I don't understand your idea exactly. The figures that I have given of the investment in the property are the actual cost of the plant, and I should not consider that anything should be deducted from that for the amount that has been put into the brick.

Q. Will anything be added to the value of the property because of the brick there?

A. Any person valuing it should take it just as they find it today. I suppose it should be valued just the same as any other part of the property. It does not change the effect of our having expended the money from our earnings.

Q. In your estimate you do not seem to get it yet. In your estimate of the value of this property upon which you think the State of Kansas ought to permit you to draw interest, how much of this $75,000 that is invested in vitrified brick do you count?

A. I think that the amount that is counted in, that was just about the difference between the cost of the plank and the brick.

Q. How much was that?

A. As I recollect it, it was about eighty cents per yard for plank and a dollar or a dollar five for brick.

Q. How much would it aggregate in dollars?

A. In that particular expenditure it would be about fifteen or twenty thousand dollars.

By the MASTER: I do not know as I understand what you gentlemen are driving at. I understood the cross-examination of General Boyle to relate to the contemplated expenditure of $75,000 for paving fifteen acres down there this coming year. Was that right?

By Mr. BOYLE: No; there is an item of expense of $75,000 in 1896 that has been spent for brick. Isn't that true, Colonel?

A. Yes; about that.

Q. My point is that that is permanent investment, and it ought not to be charged as an item in the expense account in the sense that it would be yearly.

A. It may prove to be partially a permanent investment. If it proves, as we think it will, a more durable and lasting material for flooring than planking, whatever difference there may be between the cost of the planking and that brick will be permanent investment; it may, as Mr. Little says, be proper to deduct that from the valuation of the property, but it is something that has not been demonstrated yet.

Mr. LITTLE: You did not add $75,000 to the value of the
625 property in your estimate?

A. No, sir.

By Mr. BOYLE: Will you run over those items of the expense account?

A. Yes; the first item is labor, $262,882.73; office and sundry expenses, $66,191.65.

Q. What does that include?

A. I gave quite a long list of the items yesterday.

Q. Pass that by.

—. One large item was water, fuel, and lights.

Q. Insurance?

A. No; that is a separate item.

Q. What is insurance?

A. Insurance is what I call insurance on the destructible property, $12,899.

Q. That is not as high as given before the committee, Colonel?

A. What committee?

Q. The legislative committee.

A. At Topeka? *Q.* I don't think I had any figures. I think I gave from memory whatever I was asked. The next item is rents, $7,200; the taxes you have—special city taxes, $55,702.

Q. I believe that is all for the present, Colonel. I shall want to cross-examine the colonel further after I have an opportunity of examining these books over there.

And in answer to recross-interrogatories propounded to him by Judge Horton, counsel for the complainants, the witness testified as follows, to wit:

Q. They spoke about some titles to property being taken in the name of Thayer and others. Just tell why that was done.

A. It was done so as to avoid as far as possible paying prices

above what were fair, as we might have to if they knew the stock yards company was buying.

Q. That was done, then, in the interest of economy in the operation of the stock yards, so far as money was concerned?

A. Yes, sir.

Q. When the titles were taken in those persons did they receive any compensation over what was paid by them from your company to transfer the property to the company?

A. None whatever; it was a mere accom-odation.

Q. Something was said about various deeds here. State
626 whether or not the consideration, as mentioned in the deeds to the company, is the actual money paid for the properties.

A. Ordinarily, the consideration was named from the owner of the property to the person in whose name the property was taken, and those persons in many instances—I don't know whether it would be true in all cases—but in many instances they quitclaimed for a nominal consideration.

Q. So, as a matter of fact, the deeds from the various persons to your corporation do not express the actual consideration paid by the company?

A. No, sir; they do not.

Q. General Boyle asked you about the hotel here. State whether or not you turn over in the receipts of your company the rental of the hotel property.

A. The rental of the hotel is included in the earnings in the item of rents.

Q. What percentage do you receive upon that hotel?

A. I think it stands at a cost of about sixty thousand dollars; the rental is six thousand; it would be ten per cent.

Q. That is all turned over into the receipts which you have given?

A. Yes; it goes into the general earnings account.

Q. State what you have found necessary, in reference to a hotel, in the operation of the yards.

A. It has always been a necessary feature of the stock yards. When I came and took charge of the property, in 1879, there was a restaurant and some other appurtenances of a hotel in the stock-exchange building, but as the business grew that was discontinued and a lot of land was leased near the stock yards, not owned at the time, on which a building was put up by some tenants, who took the land on a sublease and ran a hotel there. We encouraged them to come there and run this hotel on account of the necessity for it.

Q. What class of persons patronizing your yards go to that hotel?

A. As a rule, the men who come in with stock in the night go there and take rooms at the hotel, and the restaurant, saloon, etc., are all used by the patrons of the stock yards generally.

Q. There was something said about a few lots or pieces of ground that are occupied by houses or shanties; state whether or not those lands are to be occupied by the company or not.

A. We expect to occupy them all. Those places I referred
627 to are over in the extreme northerly part of our land, and some are right down on the river bank.

Q. State whether or not that property was bought for any purpose of investment outside of the stock yards.

A. It was not; it was bought for use for stock-yard purposes.

Q. And the only reason you cannot get it is on account of the leases of these buildings?

A. That is all.

Q. They spoke about donations of lands to various packing-houses, and then you spoke about investments for that purpose. State whether or not that represents money that was put in and in what way for the advantage of the stock yards.

A. That was money invested in this land to be given as one of the inducements to the packing properties to come there.

Q. For whose benefit?

A. For the benefit of the stock yards company, of course; to increase the business of the stock yards.

Q. You have paid all the taxes which have been assessed against you in Kansas and Missouri, have you not?

A. Yes.

Q. How do you dispose of the offal of the yards: where do you have it deposited?

A. That is nearly all disposed of by being dumped here on this ground next to the Kaw river and north of the Missouri Pacific track.

Q. In what way does that lessen the expense or add to the convenience of the operation of the yards?

A. Every particle of the offal refuse which gathers in the stock yards has to be removed; the pens are cleaned frequently, and if there was no such dumping ground there that was accessible, belonging to the company, it would have to be put on cars and carried some place outside of the city limits where land could be procured for that purpose.

Q. Do you know what that would cost?

A. I only know by the ordinary switching charges; we have figured on it sometimes. The lowest switching charge to the nearest accessible point would be three dollars, and it would run from that to five dollars for a loaded car, and something for the car to be brought back to us.

Q. What would be the total cost?

A. I would have to look up the figures as to the quantity moved. It is an enormous quantity. It represents sometimes as high as 15 or 20 cart-loads going all the time, for weeks at a time, carrying material on this ground.

628 Q. You spoke about the Kaw Valley Land Company. State whether or not that has any connection with the Kansas City Stock Yards Company.

A. None whatever.

Q. State if in any way the service rendered by the employés of

the stock yards company interferes with their duties to the stock yards company.

A. It does not.

Q. This dessic-ating company, is that a separate corporation wholly from the stock yards company?

A. Wholly separate.

Q. Does the stock yards company, the corporation, get any benefit from that?

A. Nothing except the rent of this one office which the dessic-ating company rents.

Q. Do they use any employé of your company which interferes in any way with the transaction of their business?

A. No, sir.

Q. In this connection, do you know whether Mr. Cotting, one of the complainants, is one of the stockholders in the company?

A. I know that he is from seeing his name at annual meetings on proxies.

Q. Do you know about Mr. Higginson?

A. Yes, sir; I know he is a stockholder.

Q. He spoke to you about the time of the reorganization of this company. From your knowledge of the values, state what was the value of the property at that time.

A. I think the amount I stated as the capital, $1,990,000, was the conservative value of the property at that time.

And in answer to recross-interrogatories propounded to him by Mr. Boyle, attorney general, the witness testified as follows, to wit:

Q. What is the value of that Kaw River bridge, Mr. Morse?

A. I think it has cost somewhere about sixty to sixty-five thousand dollars. It is a three-span bridge and a very heavy one; it requires to be to carry the moving cattle. The piers in the river have to be very extensively protected with stone in order to prevent their washing out.

Q. Mr. Richardson returned that bridge at $7,000, and swore that that was all it was worth. There is a discrepancy between his estimate and yours.

A. I am speaking of the cost of it.

Q. We are figuring on what the value is now. What do you figure that now?

629 A. I should think it was fifty or sixty thousand dollars.

Q. How do you explain his figures?

By Judge HORTON: I object to the question; he doesn't have to explain them.

Q. Can you explain them?

A. No, sir.

Q. What other personal property have you on the Kansas side other than this bridge besides such office fixtures? Have you any office fixtures on the Kansas side?

By Judge HORTON: You asked him that.

By Mr. BOYLE: I want to ask him again.

A. I think we have a desk and four or five chairs.
Q. What would you now say, in a rough way, was the value of all the personal property you have on the Kansas side?
A. It would be guesswork.
Q. Have you five hundred dollars' worth?
A. I should think we had.
Q. Have you more?
A. I should think, perhaps, there was a thousand dollars, although I could not state from definite knowledge, because it would be represented by small items scattered around through the yards, tools and things of that kind.

Questions by Mr. LITTLE:

Q. Let me see, Colonel, if I understand you. There is some six millions of dollars of cash invested in these yards?
A. Yes.
Q. Is that the right amount?
A. $6,187,398 represents the cash investment.
Q. Do I understand that the first investment of $1,990,000 was cash paid into the company?
A. It represented the cash value of the property at that time and was paid for in stock of the company at par.
Q. That was not cash?
A. It represented cash.
Q. It represented your estimate of cash.
A. If the stock was worth par it was the same as cash. The stock was issued for it at par.
Q. That is simply your estimate of what the property was worth at that time?
A. It was my estimate and that of others.
Q. Then there was $1,437,882 profits that were reinvested?
A. Yes.
Q. The only money that has been added, then, since you have been with the company, actually paid in, is $2,759,516?
A. That was all the stock that has been sold for cash; yes.
630 Q. That is the only cash, all the cash, that has been put into the company from the outside since then, since 1879?
A. Yes; if you put it in that way—cash paid in.
Q. By outside parties?
A. Yes.
Q. Now, that $1,990,000 which was invested in the original property was given to you?
A. Yes.
Q. How many acres did you say there were at that time?
A. I think there were about 100 acres.
Q. Was this $1,437,882 invested in lands or in improvements?
A. In both.
Q. And the $2,759,516 in which?
A. In both.
Q. When did you buy this 22 acres of land that you spoke of?

A. From early in 1893, which were about the first purchases, running up probably into 1895.

Q. Was that paid for from the $1,437,882 or the $2,759,516?

A. From both.

Q. When was this stock issued—that is, this $2,759,516; what years, and how much each year?

A. I don't think I can give you the years; I have not the memoranda. I can give you pretty near it. I think there was $535,000 in 1887, there was $500,000 somewhere about 1890, and $1,600,000 or $1,700,000 somewhere about 1892.

Q. Now, what land have you bought; that 22 acres that you stated?

A. Its aggregate cost was $1,289,230.78.

Q. That is 22 acres. What other land did you buy with this money; what was its aggregate value?

A. I haven't anything in such form as aggregate cost, because it has been mostly bought in lots which have been scattered along over a considerable time, and I have not aggregated it anywhere.

Q. You said you had how many acres in 1884?

A. About 100.

Q. And 22 makes 122?

A. There was 15 over there on the quarantine side, that was one purchase; there was seven acres in another purchase, and the balance would be made up of these scattered parcels along in the north-side yards.

Q. 122 and 15 is 137 and 7 is 144. How many acres have you got?

A. I am giving these facts from memory, and I cannot give you the exact information. Mr. Boyle has asked me to give him
631 a list of the property and when bought, and I propose to have it made out in a regular schedule.

Q. What did the fifteen acres cost that would be in this schedule you are speaking of?

A. I think it is better for me to get that information exact, right from the records.

Q. Colonel, of this 22 acres, you said 11 and a fraction cost on an average of $88,000?

A. Yes, sir; I think that was the figure.

Q. What did the other 11 average?

A. I haven't got all the detail of it here, but that 11.8 acres which averaged $88,000 varied in cost from about $65,000 to over $150,000.

Q. But the average was $88,000?

A. The total of the 22 was an average of $56,401.

Q. I beg your pardon; I want to get at the other 11 acres; that would be done by deducting that that cost $88,000 from the entire cost of $1,289,230.78.

A. I explained yesterday that in getting at that figure that in the 22.5 acres is included all the streets and alleys which were vacated by the city, which, of course, only cost us what it cost to remove the tracks and to perform various other obligations to the

city, so that that reduced very largely the average of what we bought, taking what we actually bought and this that was vacated and went to the company.

Q. That was given to you?

A. Not entirely given; I think it represented a cost in what we had to do in order to carry out our arrangements with the city, something over a hundred thousand dollars, and I am including that area in the cost of the whole, which reduces the average cost very much, bringing it down to $56,000 an acre; that is to the advantage of lowering the price per acre very much, because if it had been bought in the same way——

Q. (Interrupting). How much land do you estimate there was in the alleys and streets vacated by the city?

A. I think that would represent something like seven acres.

Q. That the city gave you?

A. Yes.

Q. You put that in at $56,000 an acre, do you?

A. No; I am only putting in what the actual land cost, including in the area (the average cost per acre) these vacated
632 acres; I am not adding anything for the cost of them, but I am separating the actual cost of the 22 from the streets.

Q. That cost about $100,000, you say?

A. Yes; I think fully that.

Q. You have counted that in that amount of $1,289,230.78?

A. Yes.

Q. You take 7 from the 11 and it leaves 4?

A. No; that comes from the 22.

Q. Eleven acres averaged $88,000 an acre?

A. Yes.

Q. That is about $960,000?

A. Yes.

Q. The whole 22 acres cost about a million and a quarter. $960,000 from a million and a quarter leaves about $280,000. The $100,000 to secure the vacation of the streets leaves about $200,000, and it leaves four acres to account for, and that would bring it down to $50,000 an acre. I understand these acres cost you about $50,000 an acre?

A. Figuring it roughly, it would be about that.

Q. How cheap did you get any of the land?

A. I think the cheapest purchase was a piece down here at this end. That land was about thirty-seven or thirty-eight thousand dollars an acre. That was one of the earliest pieces that was bought.

Q How do you account for the difference between that land that cost $88,000 and that which cost $38,000?

A. It runs in one strip; but all the land north of 17th street was held at much higher prices; was much more valuable because it was closer to the railroads, and the city was improving to some extent and growing in the direction of the business of the stock yards. The street railroads came in here, and the whole appearance of the city was different, and the business of the stock yards was in this

northern part. Down there it was more remote. The same thing is apparent today. The southern part of these streets is not so valuable as the part up nearer the main yard. The northern part of this 22 acres is the more valuable part—the part that is nearest to the Exchange building and the more central part of the business where the people congregate. That is the way it has been held.

Q. Where was that acre that cost $37,000—where was that located?

A. It was on this land; down here on this lower end.

Q. The southern end?

A. Yes; extreme southern end. The cheapest property was down there.

633 Q. Do you account for the difference between $38,000 and $88,000 by the location?

A. Yes, sir.

Q. Improvements had nothing to do with it?

A. Improvements had something to do with it—the value of the improvements—but the fact was that the land was improved, and was more where the people came together for business and other purposes.

Q. Improvements had something to do with it, then?

A. The improvements had something to do with it; yes.

Q. Did the fact, as Mr. Boyle suggested, that they held you up a little have anything to do with the difference?

A. It had to do with the difference in these pieces of property that came highest; yes.

Q. Wasn't a large part of that cost due to the fact that they held you up?

A. No; that was due in only a few cases.

Q. Did that include all the property that cost the highest prices; was every one of those a hold-up?

A. No, sir.

Q. Take one piece that was not a hold-up which brought the highest price.

A. Take any of this property that was in this block; down anywhere in the vicinity of the stock yards; had been for a number of years at quite high prices.

Q. Did that all sell to you for the same rate per lot?

A. No, sir; not all of it.

Q. How do you account for the difference in the prices of that lot?

A. The different individuals who held it had different ideas of the value.

Q. Some of them were more shrewd in selling than others?

A. Yes.

Q. What would it have cost to replace t-e improvements on these 22 acres, if you had done it?

A. Somewhere in the neighborhood of $50,000, we estimated.

Q. The original cost of the improvements that you found on the 22 acres you estimated at $50,000?

A. Yes.

Q. Any more?
A. I think it was, maybe, over $50,000; fifty to five-five or six thousand dollars.

Further questions by Mr. BOYLE:

Q. Colonel, I wanted to ask you why your company has never made a report to the secretary of state, as the law requires.
634 A. I can only answer that I do not know. If it has not been done, it is an oversight. Until within a very short time—a very few months—I did not know there was such a law. In Missouri, I think, they have a similar law, but they send blanks out which we have to fill out.

Witness excused.

635 CHARLES F. MORSE, a witness heretofore duly sworn on behalf of the complainants, upon being recalled for further direct examination, in answer to direct interrogatories propounded to him by D. R. Hite, Esq., counsel for the complainants, testified as follows, to wit:

Q. You say in your affidavit that the gross expenditures for 1896 were $549,351.80. State in a general way what those expenditures were.
A. In my testimony the other day I stated that the usual operating expenses of the property one year with another were from thirty-five to forty per centum of the gross earnings, and that in addition to those expenses there were expenses of reconstruction, renewal, and various other matters which required a considerable additional expenditure beyond that. The items in a general way that you ask for consist of labor in the construction and renewal of sundry buildings, chutes, fences, railroad tracks, viaducts, drainage, water service, etc., amounting to $22,801.31; the material in the same, $47,618.51, the two items amounting to $70,419 82; paving in the yards, $75,169.87; paving streets, sidewalks, $35,703.06, making a total of $181,292.75.
Q. State whether those expenditures, outside of the ordinary operating expenses, are of a usual character.
A. They are, with the exception of the street paving. That is something which will not have to be done again for a good many years. It was done under city ordinances, and the city keeps the streets in repair, and there will be no further expense of that kind until the pavement is worn out. Then if the city should order a new pavement put down the property would have to pay for it.
Q. State if you mean you would have to do the same amount of paving in the yards every year.
A. For the present year and for the next three or four years the paving in the yards will be fully up to the amount done last year. At that time, when that is done, in three or four years, the yards will all be paved with brick and the oldest part of the paving will be some nine years old. If the information which I have is correct, the paving should last twelve or fifteen years and the expenses for

that time should be considerably less. If that estimate of
636 from 12 to 15 years is correct, it would run from thirty to forty thousand dollars a year on an average. Some of the testimony given here has been on the basis of a much shorter life for the brick paving. I think that would be fully true in the case of the alleys, which are exposed to the heaviest service by riding horsemen, teams, and cattle. It may give out in that short time, but take it right through, I think the estimate of from twelve to fifteen years is a safe one. It would run on that basis between thirty and forty thousand dollars a year.

Q. When would that expenditure of thirty or forty thousand dollars a year begin?

A. I think it would begin by the time when the last of the new paving was done; not necessarily when the last of the new paving was completed. It might not be for two or three years afterwards. I want to explain that there would be some expense each year. There is in all pavements a certain percentage of bricks that are poor and have to be taken out. This would be an item of expense from the first, but the thirty or forty thousand dollars a year which I spoke of is based on the necessity of renewal every twelve or fifteen years.

Q. State what other renewals there would be each year.

A. The renewals each year would be on account of what we call our most perishable property. That represents fully one-half of all the improvements down there, consisting of hog sheds, viaducts, fences, chutes of all kinds, and the minor buildings about the yards, and in addition to this a small percentage of anywhere from four to five to six per cent. on the more permanent buildings. On the buildings I have spoken of the percentage of depreciation would run fully ten per cent. In some cases it is as high as twelve per cent. The fact has not been very fully brought out in this testimony about repairs and renewals. The impression has been given by witnesses that ten per cent. of the cost of structures applied to those structures each year would give us *at* all practically new property. Now, that practically is not the case at all. The truth is that repairs begin to a limited extent as soon as a building is completed where it is exposed to this rough use in the yards, and the repairs continue for a certain length of time until the building or whatever it may be is regarded as not being worth repairing any longer,
637 and then it is taken down and replaced. To give an example of that, in 1889 the company built an extensive viaduct over the Union Pacific and Missouri Pacific tracks which cost a large amount of money. It was built as well as we thought it could be built for the purposes for which it was to be used. It has been in use ever since then. It has been kept in repair at a considerable expense ever since then. The planking has given out in the floors and some of the material is not so good as others. Whatever has been necessary to be done has been done to it both in the flooring and in the structure itself. Here a month or two ago, in the inspection which is going on, it was declared to be unsafe, and that there was nothing to do but to tear it down and build another; that

t could not be repaired in such a way as to be fit for service and be safe for use, so it was condemned and a new structure is now being prepared to replace it; but in spite of the fact that it has been condemned and must be taken down and a new structure erected in place of it, right now there are repairs being made upon it which will require an expenditure of three or four hundred dollars in order to keep it going as long as possible, so that the cutting out of the use of it will be just as short as possible. I want to make that distinction between ordinary repairs which go on all the times and these renewals which come along from year to year. That would be true of every piece of property of a perishable character which we have about the yards. The same thing is true of the hog sheds. The hog sheds are kept in as good repair as possible all the time, but they only last a certain length of time, eight or ten years, then they have to be torn down and new one constructed. It does not pay to try any longer to put in new posts and new material here and there in them. It is the same experience which every railroad company has with its rolling stock. I have had some experience in that line. A box car is said to have a certain length of life—ten years, we will say—but that does not mean that the car can be put upon the track and run for ten years, but it means that every month it must have some repairs, and, in spite of all repairs, after a certain length of time it must be taken into the shop. The same is true of locomotives. They
638 must be constantly repaired, but they have a pretty certain length of life and at the end of that time they have to be renewed.

Q. What railroad experience have you had?

A. About ten years. I was connected with the Burlington & Missouri River Railroad Company in Iowa for two years, and afterwards general superintendent of the Burlington & Missouri Railroad Company in Nebraska, and afterwards general superintendent of the Atchison, Topeka & Santa Fe Railroad Company from 1874 to 1879.

Q. That was just prior to your connection with this company?

A. Yes, sir.

Q. What have you to say in reference to the present condition of the plant over there respecting its efficiency?

A. It is in the best condition that we are enabled to make it as to its efficiency, with the exception of such things as are giving out and are being repaired and renewed from time to time. It is complete as a plant.

Q. State if any of the expenditures made from the gross earnings in 1896, other than ordinary operating expenses, have been capitalized—that is to say, represented by an issue of capital stock.

A. No, sir; there has not.

Q. Any of the operating expenses been capitalized, Colonel Morse?

A. No, sir; they have not.

Q. What is the authorized capital stock of the Kansas City Stock Yards Company?

A. $7,500,000.

Q. Has the company any power to increase the capital stock beyond that amount?

A. No, sir; not under the laws of Kansas.

Q. How much capital stock has the company issued?

A. $7,368,650.

Q. How much does that leave remaining of the capital stock?

A. $131,350.

Q. State if the items of expenditures you have referred to, other than operating expenses in 1896, were charged to the expense account on the books of your company.

A. No, sir; they were charged to construction accounts.

Q. State what was the reason for doing this.

A. The company has never had what would be called a renewal account. Simple repairs such as I have referred to as being
639 ordinary matters of daily repairs have been charged to an account called the repair account, but in the last seven or eight years since the property has been practically all reconstructed, with the exception of a few of the larger buildings like the exchange building, all of these items have been charged to construction account, and the amounts have been from time to time capitalized by the issue of stock; some of it was sold for cash and some of it was issued to take the place of net earnings invested in that way.

Q. State if that same system is still in effect.

A. You mean charging expenditures for renewals in this account?

Q. Yes.

—. No, sir. The construction account, so far as improvements and renewals or anything of that kind for building, is practically closed, is closed now, and everything of the kind in the way of expenditures is put directly into the expense account.

Q. What were the reasons for making that change?

A. There were a number of reasons. The company had issued all of its capital stock except this $131,350, and that amount was set aside for use in closing up some remnant purchases of land that are needed to round out and complete the plant. Another reason was that, according to our belief and the best information we had, the business was approaching the maximum, and there was no reason for believing that any further considerable amount would have to be expended for original construction, and that the plant as a whole was complete. That was the idea.

Q. Is there no reason, then, for having a construction account?

A. No, sir; none whatever. The capital is exhausted, and everything will hereafter be taken from the revenue of the company.

Q. You state that the business of the company is approaching a maximum. What reasons have you for supposing that?

A. We have very good reasons. The business—the live-stock business—take it as a whole, for the last six or eight years has not increased; that is, I mean, take it as a whole; but the market in Kansas City has increased its business, but it has done it wholly in competing territory. In Kansas, from which we have always derived the largest part of our receipts—to give you a clear idea and

o show what the opinion of the company is based on, I will pro
ceed to read these figures, which are the receipts from the
640 State of Kansas for the years 1890 to 1896, inclusive. These
figures, in the first place, are for cattle: In 1890, 943,326
head——

Q. These are receipts from the State of Kansas?

A. Yes, sir; I am just taking these as being from territory directly tributary to this market. In 1891, 821,536; in 1892, 1,023,655; in 1893, 1,071,776; in *in14*, 922,609; in 1895, 732,290 head, and in 1896, 863,430—that is, during the period of seven years the receipts of the last year approximated within about 10,000 of those of 1890, but were during the same year 200,000 less than during 1893. On calves I will give it to you in round thousands: In 1890, 27,000; in 1891, 37,000; in 1892, 57,000; in 1893, 57,000; in 1894, 36,000; in 1895, 29,000, and in 1896, 33,000. On hogs: In 1890, 2,051,589; in 1891, 1,873,796; in 1892, 1,722,901; in 1893, 1,419,141; in 1894, 1,698,795; in 1895, 1,528,062; in 1896, 1,625,848—that is, 400,000 less than in 1890. On sheep I will give it in round thousands: In 1890, 278,000; in 1891, 206,000; in 1892, 244,000; in 1893, 295,000; in 1894, 216,000; in 1895, 191,000; in 1896, 294,000. The gain which the company has made in its receipts since 1890, which have been quite large, have been, as stated, from competing territory, where we expect to continue to work and to get as much business as we can, but it is my judgment and the judgment of those who have looked most carefully into the matter that we are very near the maximum point on our business at this time.

Q. State whether or not the present plant is sufficient for the present and prospective requirements likely to be laid upon it.

A. We regard it so, although we are expecting that we may in time have to make a little larger facilities for the packers and others who do business here. If they should enlarge their business, it would make some more requirements there in the vicinity of their yards. If we should have a very large corn crop for a year or two in succession, it would undoubtedly increase the receipts of hogs, so that we might have to have some increased capacity for hogs.

Q. You stated that the balance of the capital stock, 131,350, has been appropriated to a special purpose. Have you any objection to stating what that purpose is?

A. There has been a very free discussion of our plans
641 here, and I don't know that it would make any particular difference to call attention to this matter here. The purpose in buying these lots here marked e e e e e e e was to square out the property to this point. That is partly because we were short of railroad facilities and partly because we thought we might have to extend, and the packers were gathering up on that side, and we were liable to be cramped, as we thought, and we wanted to get what was necessary to square out our holdings over there. We had done it on this side and wanted to do it over there. There are left in here numerous tracts of land—some 23 or 25—that the company has been negotiating for from time to time for the last two years. It has been trying to buy them at a cost of

seventy thousand dollars. We have not been able to do that and shall not be able to get the land within that price, but that is the purpose for which we expect to use that money or the greater part of it.

—. In order that I may understand that thoroughly, Colonel Morse, the extension does not grow out of any anticipation of increase of business, but merely for the purpose of better facilitating that which you have?

A. That is the main purpose; yes, sir. It is in general for that reason. The railroads there are actually without any chance to develop any further on that side, and the railroad facilities at times now are very much cramped, and we have got to put in more tracks in order to enable the railroads now doing business there to do it promptly.

Q. State what, in your judgment, will be the average yearly expense of operating and maintaining the stock yards with your present magnitude of business.

A. Well, I have estimated that it is practically impossible to do it much under the thirty-five or forty per cent. of which I have spoken for the usual general expenses of operating and running the property.

Q. You are speaking of a business like that of last year?

A. Yes, sir; taking as a round figure a million dollars, which was about the business last year, I think that from $360,000 to $380,000 would be about our experience of the cost of the ordinary expenses.

642 We have, according to the estimates of our own people, who have testified here, somewhere in the vicinity of $1,600,000 of improvements. A part of that is in buildings of a permanent character like the exchange buildings, and some of the stables where the per cent. of renewal would be very small—not more than three or four; some five or six—and we have the other class of improvements, which are very short-lived, on which it will run anywhere from ten to twelve and in some cases as high as fifteen per cent. I think that an average of eight per cent. on the whole would be a very low estimate of the yearly renewals, and I should place the cost of the yearly renewals at from $125,000 to $150,000, which would make a gross expenditure of from $475,000 to $525,000 a year. As far as I can look ahead for the next year or two it will run over five hundred thousand dollars a year.

Q. In order that I may get that clear, you mean that thirty-five or forty per cent. of the gross annual income of the company is needed to pay the ordinary operating expenses of the company irrespective of the renewals which you have been testifying about?

A. That is what I mean.

Q. It will take upwards of five hundred thousand dollars a year to maintain the plant in its present state and condition of efficiency?

A. Yes, sir; to operate it efficiently and to maintain it in that condition in which we have so far maintained it.

Q. Have you the figures, obtainable by yourself or through your departments, as to the reduction of revenue to the Kansas City Stock

Yards Company by the enforcement of the statute under consideration?

A. Yes, sir: I have.

Q. Have you got the estimate in such shape as that it may be compared with the year 1896?

A. I have made it on the basis of those figures; yes, sir.

Q. Will you state to the special master the result of your estimate, comparing the figures as you estimate them under the operation of the present statute enacted by the last legislature of Kansas with the business of 1896?

A. To make a perfectly clear statement, I should like to read from my memorandum. I will read first the figures which are taken from the records of the company, and they will show you exactly how the other figures are obtained. Yardage of cattle,
643 1,619,363 head, at 25c., $404,840.75; calves, 95,632 head, at 10 cents, $9,563.20; hogs, 2,594,465 head, at 8 cents, $207,457.20; sheep, 873,934 head, at 5 cents, $43,696.70; total yardage under the rates of the company, $665,658.05. Hay, 229,200 hundredweight, at a dollar a hundred. That is the gross amount paid by cattlemen for hay; not the amount which shows in the net earnings for hay; 229,200 cwt. of hay at one dollar a cwt., $229,200; corn, 68,557 bushels, at one dollar a bushel, $68,557; total, $297,757 for feed. The cost of the feed was $109,762 31, which makes the earnings on feed, $187,994.69; so that the revenue from those two departments in 1896 was $859,687.54. The rates as fixed by the Kansas law are for yarding cattle, 15 cents; calves, 8 cents; hogs, 6 cents; sheep, 4 cents. Using the same numbers of stock, we have on 1,619,363 cattle, at 15 cents per head, $242,904.45; calves, 95,632 head, at 8 cents, $7,650.56; hogs, 2,594,465 head, at 6 cents, $155,667.56; sheep, 873,934 head, at four cents, $34,957.36, making a total receipts for yardage under the reduced rates of $441,179.93. Hay, 229,200 cwt., at 70 cents per cwt., which has been the average price, $160,440; corn, 68,557 bushels, at 46 cents, $31,536.02; total, $191,976.02—that is, one hundred per cent. above the market prices; so that the cost is just one-half, which would make the net earnings from feed, $95,988.01. The sum of the two items—for yardage and feed—under the reduced rates fixed by the law would be $537,167.94, which deducted from $859,687.54 would show the difference under the law of $316,485.80. That is figured as closely as it is possible to figure it.

Q. In figuring the yardage in these estimates with reference to the transactions of 1896, were these estimates made with reference to cattle sold?

A. These were with reference to cattle sold; yes, sir.

Q. And these figures could not be shown from an estimate at these rates on your gross receipts?

A. No, sir; there is a certain percentage of the cattle that are not sold.

Q. I call your attention to the fact, Colonel Morse, that in arriving at the amount of reduction that you call the revenue under the

rates of 1893 as $859,000, were you not mistaken about that? Is it not $853,000?

A. I have not the corrected statement. I have the one on
644 which I made the figures, but it has some errors in it. I believe Mr. Child has a copy of a later one. In this corrected copy it is $853,652.74.

Q. I desire to ask you some questions about the land belonging to the company. Is there any land belonging to the company at this time other than that which we have been discussing and that is used for stock-yards purposes?

A. Yes, sir; the company owns, but it — in the hands of a trustee, a tract of land that is up the Kansas river, about three miles from the stock yards, opposite the town of Argentine, containing about 140 acres—142.831 acres.

Q. Will you state to the special master the circumstances concerning the acquisition of that land?

A. This land was acquired along from 1881 to 1884. The reason for it was, as I have stated in other testimony, the situation at the plant along in 1881 and along at that time was that it was on a comparatively small area. The city was growing around it rapidly, and apparently it was not a very good place to extend for a property of this sort, and the question was considered of making another location to which the business could be removed, and in looking the matter over I selected this land as being a desirable location, having the Kaw river for a drainage front and being accessible with some difficulty, but still accessible to railroads, and the conditions seemed to be perfectly suitable for the development of a stock-yards business. The land was acquired with that purpose in view, and complete plans were made in every particular for a complete plant there, such as we have at present here. Then the matter was brought forward for the consideration of the railroad companies and those packers who were here at that time. There were only two large houses, Armour and the Anglo-American Packing and Provision Company, and I believe one other that was running in a small way; possibly a house which had just started. The opposition to the move was very great, and the proposition was submitted that if we wanted to move the stock yards up there, *and* would have to move the packing-houses, too; and from the railroad standpoint, they the same as demanded that we should provide them with the necessary railroad facilities for getting in there, and the situation became
such a difficult one, so far as we could look at it, and the cost
645 was going to be so great, that after very full consideration of it, it was decided to abandon the plan of going up there, and to buy property in the vicinity of the present stock yards and develop the business just where we were, and that plan has been carried out. This land was conveyed about that time to a trustee to hold for the stock yards company, and there has been nothing done with it except that occasionally it has been used for holding cattle or something of that kind. It has been a farm, as it was before, most of the time since then. I would state that in estimating the value of the different parts of the property of the stock yards com-

pany I did not include this property, because I did not regard it as being property that is being used in any sense by the company.

Q. You do not consider that it has any r-lation to this controversy at all?

A. I do not.

Q. Colonel Morse, has the Kansas City Stock Yards Company any interest in any other stock yards or similar institution?

A. Yes. I will make a statement in regard to that. The stock yards company in its various efforts to extend business made a considerable effort a number of years ago in these western Territo*tires*, and in doing that in Utah came in contact with a situation which was that of a local company struggling to build up a stock yards for which they had secured the land, and had expended at that time some sixty or seventy thousand dollars, but were not able to carry out and complete their plans. They made us a proposition that if we would assist them in securing a loan on the property that they would in every way they could become tributary to the business here and practically act as our agents in that territory. As a business proposition it looked like a perfectly good one to make the loan on that kind of property, and, while the company did not do it directly, the stock yards company at Salt Lake City did issue its bonds for fifty thousand dollars, and the Kansas City Stock Yards Company agreed to guarantee the bonds, principal and interest. It did so. The bonds were sold, and for two or three years afterwards the company paid the interest. The money for which the bonds were sold was put into the property, and, as I say, for two or three years the company out there paid the interest on the bonds, but they got into difficulties and couldn't pay the
646 interest, and after the Kansas City Stock Yards Company had paid the interest two or three years it took the yards and closed out the property, so that now the company has that property there, which represents an asset of about sixty thousand dollars. The property is in operation; some parties are operating it; they pay a small rent and maintain the property, and, while I do not think we could sell it today for the amount it has cost, yet, as a business result, the Kansas City Stock Yards Company has secured a very large percentage of the business of Utah. It has practically all of the business shipped from there—a very large percentage of the cattle—so that as a business operation it has not been a failure.

Q. Has the stock yards company any interest in any other institution of any kind, Colonel Morse?

A. Yes, sir; the company has an asset of certain stocks amounting to $45,645; of that amount it has *$2,00* $42,000 of stock in the Interstate national bank, which is the national bank at the stock yards. That came about in this way: *A* About eleven or twelve years ago the banking facilities at the stock yards were very inadequate. There were two branches of banks up here in the city. These branches did business in a small way of selling exchange and to some extent of loaning out money; but they did not do business at all commensurate with the demands. The stock yards company

promoted the establishment of a bank there, which was known as the Stock Yards bank, and took about one-fifth interest in the original capital of $250,000. The bank went on for three or four years and successfully developed a large business, furnishing a great deal of capital to the cattlemen, and the business grew entirely beyond its capacity; then outside parties who saw the opportunity came in and offered to organize a large national bank there, with a capital of a million dollars, and the stock yards company was very glad to encourage that and took stock in the national bank to the amount that it had in the original bank—that is, the Interstate national bank bought out the old bank, the Stock Yards bank—all it had, money, accounts, and everything else—and paid for the stock of the old bank at $1.05—some small premium; that covers that item of $42,000. The other item of $3,600
is stock in the Schwarzschild & Sulsberger Company. The
647 history is this: The parties who preceded the Schwarzschild & Sulzberger Company, owning the property on which their plant stand now, was a small concern that did a very small cattle business, and at one time became embarrassed; they had taken a certain amount of cattle from the stock yards, and then suspended payment, leaving us with a claim against them, I think, of about that amount. I am not sure that those are the exact figures of the claim. They were unable to pay it. They remained here for some time without doing any business, holding the property, but finally sold it to the Schwarzschild & Sulzberger Company, and part of the consideration was the assumption by the new company of the claims which had existed against the old company. To settle these claims the new company issued its stock as a sort of composition with the creditors of the old company, and thus we got this stock. I will say that the bank stock is a regular dividend stock, and the packing-house stock pays a small dividend regularly. Those comprise all the items except a very small one of $45, which is the result of a subscription to promote some grain association.

Q. Is there any other matter concerning the company, Colonel Morse, to which you desire to call attention?

A. I think not; I think that those items, with the money and visible assets, the land and personal property, represent all that the stock yards company has and represented in its capital stock.

Q. Referring to this matter of surplus that the company has on hand, in order that I may be quite clear about that, that arises in the manner you stated in reference to the capital stock, and is now considered to be appropriated for the purposes you have mentioned?

A. Yes, sir; it stands as a surplus on the books of the company at present.

Q. Will you state to the special master why these matters were deferred until this time with reference to the land?

A. In my testimony I stated in a general way about our personal property; I don't think I went into it very much in detail; I was asked no question about it.

Q. None of these matters you have testified about have any rela-

tion directly to the matter in controversy here, and have not been included in your estimates about the stock yards interested in this suit?

648 A. No; the only point in referring to them is to show what the other property consists of as fully as I can.

Q. I desire to call your attention to the small piece of land that lies east of the Rock Island bridge over the Kaw river; it comprises a tract, I believe, about 30 by 260 feet. I wish you would state the circumstances under which that property was sold to the Rock Island Railway Company.

A. In 1886, I think it was, I learned entirely from outside sources that the Rock Island Company had run a line from the west side of the river right across onto this property here, across the stock-yards property about 150 feet south of the Exchange building, for the purpose of getting into the city and getting into the depot grounds just beyond here. On learning that I at once got into communication with the Rock Island people at Topeka, with Mr. Low, I think, and told him that I had learned of this, and that it was certainly going to be a very serious matter to the stock yards company, and that we would have to make as good a fight as possible to prevent them from coming into our property and cutting in two, and suggested that it was not necessary; that if he would send a proper representative to me that I would try and suggest a plan which would avoid injuring our property and be just as good for them. I think he came down himself, or I saw him soon afterwards. In the meantime I had prepared a plan which shifted their proposed line on the west side of the river, a short distance further south, on a line next to Kansas avenue, with the proposition that they should cross down there, and then we would help them to get right of way from there as far as they wanted to go. After considerable discussion and negotiation of one kind and another, for there were a good many difficulties in the way, it was finally arranged. We said to them from the first we will put in our property at a very low figure, and will try to get as many other facilities as we can for you. Those were the circumstances under which that property was sold.

Q. Those were the considerations which induced you to sell to the Rock Island road the property which I have mentioned?

A. Yes, sir.

Q. At the price at which it was sold?

A. Yes, sir; we put that price on it ourselves. We would

649 have given it to them if they had pressed us very much. We didn't want them to cut our property right in two, as they planned to do. They could hardly have compensated us in damages.

Q. I call your attention to the purchase by the stock yards company of the property on the corner of 12th and Genesee streets. Will you kindly explain to the special master the circumstances and considerations concerning that transaction?

A. As a part of the general transaction of getting this property and these streets it was necessary to make an agreement with the

railway company—the street railway company—to move its tracks onto another street. It then came down south on Bell street and back north on Genesee street. One condition that was made in regard to that was that *that* the cost of moving the track from one street to another street should be borne by the stock yards company, and that this corner here should be changed so as to make a practicable turn. Before that the street turned at an angle there, so that it cut out at a right angle with 12th street, so that, in order to accomplish that, it was necessary to buy three lots on this corner here and cut them off in this form. It is an irregular-shaped tract and still belongs to the company. I presume it can be sold for at least what it cost. The city vacated the street over here, so that the company got just about as much land as it gave.

Q. I call your attention to the 8 6 acres lying down here west of Water street. There has been considerable testimony concerning the value of that land after it is raised. Will you please state to the special master what is your best judgment with reference to the cost to the stock yards company to get that raised to grade?

A. It cost on the west side of the river, under very similar conditions, on an average of about five thousand dollars an acre.

Q. With that expenditure of money that property lying down there west of Water street will be upon a comparative level with the property known as the north yards?

A. Yes, sir.

Q. I believe you have heretofore testified concerning the use that was made of the piece lying west of the north yards—being used as dumping ground. Am I correct about that?

A. I should state that I think the cost of five thousand
650 dollars an acre for filling up the tract mentioned would include the expense of protection for the river bank. That is what we did on the other side of the river. What was the last question?

Q. After the filling is done would the land be then as available for the purposes of the company as the land in the north yards?

A. It would be for all yard purposes; yes, sir.

Q. Please state how long the stock yards company has occupied and used that river front under claim of ownership opposite the main yards.

Q. They have occupied it, to my knowledge, since 1879.

Q. Claiming to own it?

A. Yes, sir; claiming to own it right to the river.

Q. Are you acquainted with the location of Dold & Son's packing-house?

A. Yes, sir.

Q. In which State is that property?

A. It is in the State of Missouri. I would like right in this connection to correct a statement which I made in my testimony the other day concerning the Dold Packing Company. I think it appears that I said the stock yards company gave them about 2 acres of land. That was my impression at the time. I find upon looking it up that the stock yards company had a piece of land

which it had taken for a claim against one of these banks which had gone up in the old times, and it turned that property over to the Dold Packing Company at what it stood for. It was a little piece and the company received for it the amount of its claim against the bank, so in that case it was not a donation.

Q. Are you acquainted with the income, if any, derived by the stock yards company from the Exchange building in Missouri?

A. I had a memorandum of it. This is a statement which came from the books of the gross rents collected in the month of March, 1897. The Missouri portion was $2,014 and the Kansas portion $2,443.79. I would like to explain, in regard to that, that in the Missouri portion are the offices of the stock yards company. The company, as a matter of book-keeping, is charged with the rent of those offices just in the same way as other persons are, and the rents go to the credit of it. It is just a stand-off—that is, we pay $400 a month for the space we occupy. It is a mere matter of book-keeping; but these figures are just as they appear on the books of the company.

651 Q. Those are the figures furnished you by the officers of the company?

A. Yes, sir.

Q. At the time you testified previously, you said something with reference to a contract or arrangement existing between the stock yards company and the railroad companies.

A. Yes, sir.

Q. Will you please state to the special master whether that contract is in writing or not.

A. No, sir; there has never been any written contract, so far as I know. When I came to the property in 1879 I investigated conditions with reference to the matter, and that there was an arrangement in effect that had been in effect for a number of years past, and after that time, as the roads came in and applied for entrance to the yards in one way and another, they were simply told the terms on which we did business, and there was no contract either asked for or given in any case.

Q. You mean no written contract?

A. No, sir.

Q. State to the special master what are substantially the terms of that agreement between the railroad companies and the stock yards company.

Mr. Boyle objects to the question. Question not pressed for answer.

Q. Is there any agreement between the stock yards company and the railroad companies in reference to loading and unloading cattle?

A. There is an agreement with all roads which have come into the yards since 1879, when I took charge of the property. I know of no such agreement or agreements prior to that time. I only know by the arrangement which I found in effect when I took charge of the property.

Q. Has that arrangement been continued ever since that time, Colonel Morse, and lived up to?

A. It has been continued ever since that time.

Q. Does the stock yards company operate under that agreement or arrangement?

A. It does.

Q. Please state the substance of that agreement between the stock yards company and the railroad companies?

A. The stock yards companies in a certain number of cases furnishes the railroad tracks and in all cases furnishes the load-
652 ing and unloading chutes and platforms at which cars may be set, and upon the arrivals of cars at those platforms with stock to take charge of it, promptly unload it, remove all dead and crippled animals from the cars, and similarly on orders from the railroad companies to load any stock into cars which are set at those platforms and chutes and put the cattle or whatever the stock may be into the cars. That is the principal part of their obligations under the arrangement; then, in addition to that, it agrees to collect all freight charges that may be due on any stock coming in on bills of the railroad companies and be the custodian of the funds during such time as they may arrange before they call for them and be responsible for any loss and damage that may occur to the stock while in the hands of the stock yards company and while the railroad company is really the possessor of it, before it has been delivered to the consignee.

Q. Responsible to whom, Colonel Morse?

A. Responsible to the railroad companies.

Q. What consideration do the railroad companies pay to the stock yards company for the duties undertaken and performed by the stock yards company under the terms of that agreement?

A. The agreement is that the stock yards company shall receive; that the railroad companies shall pay to the stock yards company fifty cents per car for each car of stock unloaded and fifty cents for each car loaded.

Q. Is that a profitable agreement for the stock yards company?

A. I testified in my former evidence that I regarded it as being as profitable as any part of the business.

Q. When the cars of stock are received at the chutes or platforms that you have mentioned, when does the responsibility of the stock yards company begin?

Objection as calling for the conclusion of the witness. Objection sustained.

Q. What has been the recognized practice between the contracting parties to the agreement that you have mentioned concerning the beginning of the responsibility of the stock yards company after the arrival of the cars at the chutes and platforms that you have mentioned?

Objection as calling for conclusion of law. Objection overruled.

653 A. We have always recognized our responsibility as beginning when we opened the car door at the chute or platform

Q. To the railroad company?

A. Yes, sir.

Q. What has been the practice between the contracting parties to this agreement with reference to the time when the responsibility of the stock yards company to the railroad company ceases?

A. When the door is closed and fastened upon the stock after it has been loaded.

Q. I have reference to the unloading. After the stock is unloaded on the platform you say that your responsibility begins at the time when the car door is opened and the stock placed before the employés of the stock yards company for unloading?

A. Yes, sir.

Q. Now, after the stock has been unloaded, what has been the recognized practice between the contracting parties to this agreement with reference to when the responsibility of the stock yards company ceases?

A. When it turns over the stock to the owner or to the commissionman or whoever it may be.

Q. Calling your attention to the other branch of the agreement, about the loading of stock. Please state to the special master what has been the recognized agreement between the contracting parties to the agreement with reference to when the responsibility of the stock yards company commences.

By the MASTER: Responsibility to whom?

Q. Responsibility to the railroad company.

A. It commences as soon as the gate is open of the pen in which the stock is found to deliver it to the railroad company on its order.

Q. What has been the recognized practice between the contracting parties to this agreement with reference to when the liability of the stock yards company to the railroad company for the stock terminates?

A. When the car door is closed and fastened; it is then considered as delivered to the railroad company, and the responsibility of the stock yards company ceases.

Q. Am I to understand by that, Colonel Morse, it is after the cattle have been placed in the car?

A. Yes, sir.

Q. Have the contracting parties power to terminate it at any time?

654 A. Yes, sir.

2 O'CLOCK P. M.,
MONDAY, *May 25th*, 1897, at the stock yards.

Colonel MORSE on the stand.

In answer to cross-interrogatories propounded to him by David Martin, Esq., counsel for the defendant L. C. Boyle, the witness testified as follows, to wit:

Q. How long have you been connected with the stock yards company?
A. Since 1879.
Q. Have you been manager of the property ever since that time?
A. Yes.
Q. And vice-president of the company?
A. No; I have been vice-president for three or four years only; general manager all that time.
Q. You are familiar with all the property that the company has acquired before you came and since?
A. Yes, sir.
Q. You are acquainted with the books of the company and have them under your general charge?
A. Well, in a general way, I do not have anything myself to do with the books.
Q. In 1876 the company was reorganized, was it not?
A. I do not know, sir; I could not tell that without looking at some record; that was before my time of service.
Q. You *that* know that as part of the history of the company?
A. I know that in some year between 1871 and 1879 it was reorganized, but I haven't any data about it.
Q. The old company commenced business in 1871, did it not?
A. Yes, sir.
Q. That was called the Kansas Stock Yard Company, was it not?
A. I think that was it.
Q. When you came into the management of the company what was its name?
A. My recollection is that it was the Kansas City Stock Yard Company.
Q. That company had succeeded to all the rights of the Kansas Stock Yard Company, had it?
A. I understood so; yes, sir.
Q. Now, in 1884, about January 1st, there was another reorganization, was the- not?
A. Yes, sir.
655 Q. What was the name of the company then?
A. You mean what was the name the company reorganized under?
Q. Yes.
A. The Kansas City Stock Yards Company—a difference only of one letter.
Q. Now, in referring to the stock yard company or the stock yards company, I shall speak of it in my questions as thouhg it

were a continuous thing, and not give the designation of each particular company that has been reorganized. Can you tell me how much was actually paid for the property of the company which has been designated on the map used by the witness for illustration as tract B in Kansas—that is, I mean the amount that was actually paid to the persons who owned the land?

A. I would not testify to that without having the record right before me.

Q. Will you please get the record and see if you can answer the question? (The land ledger is brought in.) They are tracts 1, 2, and 4.

A. As I understand it, your question refers to the land in Kansas in the main yards.

Q. Yes—that is, I mean, Colonel Morse, the lands that were purchased and not those which were made or the accretions from the river, but just how much was paid to the owners of the lands about 1871.

A. The cost of the land in those three tracts, as shown by the land ledger, was $27,750.

Q. Those were purchased in the name of Colonel Chanute, were they not?

A. Those were purchased in the name of Octave Chanute.

Q. The purchases were made in 1871?

A. I think all of them; yes, sir.

Q. Colonel Chanute conveyed to the stock yards company in 1872, did he not?

A. In 1872; yes, sir.

Q. The quantity described was 28.4 acres, was it not, in the deed from Colonel Chanute to the company? Wasn't the amount 28.4 acres?

A. No, sir; the amount in No. 1 was 13.5 acres, in No. 2, 15 acres, and in No. — 1.92 acres, making a total of 30.42. That is the original purchase.

Q. Have you a deed from Colonel Chanute?

A. Yes, sir.

Q. Will you procure it?

A. There is one tract, No. 3, that you have not named.

Q. I will get to that later.

656 A. Here is the deed from Octave Chanute and wife to the Kansas City Stock Yards Company covering tract No. 1.

Q. Doesn't it cover the three tracts? How many acres does it cover?

A. Total, 28.4.

Q. That is the only deed that the company has from Colonel Chanute?

A. I believe so.

Q. In the deed for tract No. 2, in this subdivision B, from Ditsch and wife to Chanute, how many acres are mentioned?

A. About fifteen acres of land, it says. It says, "Containing in 1863 about fifteen acres of land."

Q. Is tract 3 a part of the original purchase from Ewing to Chanute?

A. Yes, sir; that was a part of the land of the company that was intended to be conveyed by Chanute to the stock yards company.

Q. How much was that?

A. It is given on the record here as 3.73 acres.

Q. Read the description from the deed.

—. "And containing 3.73 of an acre and being a portion of what was formerly known as the Armstrong tract."

Q. You understand that to be a part of the tract B of the lands in Kansas?

A. Well, Judge, all I can say is that when I came into the management of the property I learned and know in a general way where the boundaries of the lands are that the — claimed to own, but as to how it derives its title to any particular tract, I have never looked back to that date to see. This is the first time I have ever made an examination of these old records.

Q. You know that the tract B, being the part of the main yards in Kansas, is considerably more than the quantity described in the deed from Colonel Chanute and considerably more than the aggregate of these four smaller tracts, don't you?

A. I know that it is: yes, sir.

Q. How was that enlargement made?

A. It was made partly by the river changing its course somewhat and leaving more land to the bank of the river and partly by the artificial means which had been used in the protection of the rest of the river bank. The river was inclined to cut this entire river bank out, and probably if let alon*g* it would have gone as far as the Union depot, and to protect against that we threw jetties out
657 into the river—my predecessor did—extending out into the river, and in the course of time land formed in between these jetties out to where the ends of the jetties were, and afterwards that land so made was filled up and brought up to the grade of the rest of the property.

Q. Do you know how many acres were thus acquired?

A. I think there must have been ten or twelve acres.

Q. That is, belonging to this particular tract that we have been speaking of?

A. Yes, sir; forming on the front of the river.

Q. That tract may generally be described as being bounded on the east by the State line, on the west by the river according to its present channel, on the north by the railroad yards of the Union Pacific and Missouri Pacific Railway Companies, and on the south by Turkey creek?

A. Yes; that would be a general description of it.

Q. Do you know where these jetties and protections extended along the river bank?

A. Not exactly; I dou*a*t if it would be possible to locate them exactly; they are entirely covered up and out of sight now, but the ends of them were just about where the line of the river is now—that is, the outer end. The idea of Mr. Nettleton, who built them,

was to place them about where the original bank of the river had been, as indicated by some marks that he had, and the ends of the jetties are where the front of the bank now is; that was the extreme point to which the river filled.

Q. Has it been necessary to protect that made land by further work from time to time?

A. Yes, sir.

Q. Has any of this work been done since you have been in charge?

A. Yes.

Q. Much of it?

A. Yes, sir.

Q. In the substituted Exhibit D, which I believe is substantially the testimony of Major Drought as to the improvements, he says, for foot piling, cribs, riprapping the banks of the Kansas river, east bank, 3,100 lineal feet, including 11 jetties or cribs; what jetties and cribs are those—the ones that you have referred to?

A. I think it includes those; there were others put in in addition to the original ones.

Q. Are any of the jetties or cribs visible now?

A. I think not, sir.

Q. All covered up?

A. All covered up.

Q. Is any of the foot piling visible now?

658 A. It might be at extreme low water; at this stage of water you would hardly see anything of it.

Q. Is any of the riprapping visible now?

A. I think so; I have not been down on the river front very lately, but it is generally all visible—that is, above the water line.

Q. When was the riprapping put in?

A. It was done over a considerable period; I could not tell without looking it up, but it has all been done since my time here.

Q. Is this statement of 3,100 feet about right?

A. I think so—that is, according to actual measurement.

Q. Now, does that cover the whole front of this tract that we have been talking about; this tract B?

A. I think that which he describes as on the east side of the river is all south of the Union Pacific bridge and north of Turkey creek; that is my impression. I don't think there is anything else included in that.

Q. Does it extend the whole length of the river front between those points?

A. Yes, sir; except, perhaps, a little piece of right of way belonging to the Union Pacific Railway Company.

Q. Now, the office of all that work is simply protection against the river and the accumulation of these accretions?

A. It is mainly for the protection; of course, our buildings extend right to the edge of it now, and any destruction of the bank would mean the carrying away of our property.

Q. And, incidentally, it has resulted in the accumulation of accretions amounting to ten or twelve acres?

A. This river protection has had nothing to do with the accretions; the accretions were accumulated by the building of these jetties to a certain extent only—the balance of the accretions have been made by filling up land—that is, the river would only fill the land up to somewhere near high water; there would be a good deal of sediment in the river and it would fill in between the jetties, and beyond that point it would have to be filled up by artificial means.

Q. It is necessary, is it not, in the operation of these yards, to clean out the cars of the manure, old straw, and the like of that which they contain and which is used for bedding?

659 A. No, sir; the stock yards company has nothing to do with that at all. The railroad companies clean their own cars.

Q. Where have they dumped this manure, straw, and things of that sort since you have been here?

A. I don't remember that any of the railroad companies dump on this property. I would not say positively that they have not, because I do not remember. I think each railroad company has its own dumping place; takes the cars out and dumps them where it has arrangements for doing it. There has never been a general business of cleaning cars here, I know. If it ever has been done, it has not been done in a regular or systematic way.

Q. Has the cleaning of cars been done by the stock yards company's men?

A. No, sir.

Q. Paid for by the company?

A. No, sir; it has nothing whatever to do with it.

Q. The railroad companies have dumped that sort of stuff wherever they chose?

A. Yes, sir.

Q. There has been some of this same sort of protection on the west bank of the river, has there not?

A. To the extent of riprapping. There has never been any jetty work done there.

Q. When was this work done on the west bank of the river?

A. I think it has covered a period dating back probably eight or nine years, possibly ten years. The latest has been done as late as within the last three or four years.

Q. It had a tendency to wash over to that side opposite these yards here?

A. Yes, sir; it has that tendency as soon as you bring a bank to the height of the grade. In times of high water the wash of the water will soon eat the bank away, almost as fast as it could be done by a mechanical process. When there is a freshet in the river there will be something that will set the current in against the bank and gouge it out with great rapidity and there is no holding such a bank except by having it riprapped.

Q. The filling in of ten or twelve acres of ground on the east side might have had the effect of causing the water to impinge upon the west bank and cut it away?

A. Well, to some extent, but in the original condition of the river

it spread out on both sides over a great tract of territory, and
660 naturally the more widely it would spread the less likely it was to wash, but still, in times of high water, the action of the waves and of the sand would cut away a bank wherever it touched it.

Q. Was there any piling down there on the west side?

A. No, sir; not on that front that I remember of, but I won't be absolutely certain about that. I don't remember that there was. That, I think, was riprapping straight.

Q. What is the length of that? It is given by Major Drought as 2,300 feet.

A. I have no doubt it was correctly measured by him. I have no figures.

Q. That is actually longer than the river front of property occupied by the stock *h*ards company, is it not?

A. The stock yards company owns on the west side and has a right of way for a long term of years for a stock drive which runs along the river front and which was obtained for the purpose of connecting with the packing-houses on that side and in order to protect that stock drive. It has been necessary to maintain this front. If it had not been protected it would have been washed out very rapidly.

Q. What is the character of that riprapping work or protection on the west side of the river?

A. Well, it is good, solid riprap work, which has been built and replaced as any of it would slip into the river. In a river front like this it almost always happens that a certain amount of the stone is lost and has to be replaced.

Q. The riprapping is all visible above the water line?

A. I think so. There may be some places where manure or other rubbish has been dumped on top of it, but I think probably it is all in sight.

Q. How is it along the east front along these accreted grounds?

A. I think that generally it can be seen just where it lies, although it may *too be* covered up in places by refuse which has been dumped on top of it.

Q. The jetties are all covered now with solid land?

A. Yes, sir.

Q. The piling is also covered?

A. The piling in the jetties is covered.

Q. Are there any indications now of where the east line of
661 the river or the east water line extended to on this tract marked B?

A. I don't believe that there are. We cannot see, of course, where it extended to at high stage. At a low stage of water the banks were out fully as far as this riprapping, but take it at high stage of water I don't think you could find any indications of it.

Q. Is there any way of ascertaining from the surface of the ground what was the original purchase, and what is the ground that has been made by the accretions that have been added to the original tract?

A. I think it would be difficult to find it. I suppose it would be possible to find it by taking up the planking and removing floors and the railroad tracks. An expert might be able to tell what was the original and what the made land. At one time Turkey creek had its bed right through the yards and across the yards of the Missouri Pacific Railway Company. There is a large body of made land right through there, so that it would be difficult to tell which was made from the filling of Turkey creek and which from the filling of the Kaw.

Q. This stock-yard property is near the confluence of the Missouri and Kansas rivers, is it not?

A. Yes, sir; quite near.

Q. And whenever there is high water in the Missouri river, there is high water in the Kansas river?

A. Yes, sir; it backs up three or four miles above here.

Q. I will now call your attention to the tract of land that has heretofore been described on the map for illustration in evidence as east of Water street; we have heretofore referred to it as the north yards. Those north yards are on the peninsula formed by the Missouri and the Kaw rivers, are they not?

A. Yes, sir; they lie between the two rivers.

Q. The company owns considerable land in the vicinity of the stock yards which is not occupied by the stock yards at present?

A. You mean these small tracts marked E?

Q. I was just speaking of it in that general way.

A. It owns all of this tract E; yes, sir; and these little detached pieces here lying as far north as Central avenue.

By Mr. HITE: You refer to these tracts marked E?

A. Yes, sir.

662 By Mr. DANA: You do not mean to say that those are not used?

A. It is all occupied by the stock yards company except this piece which has been described as lying west of Water street and these detached pieces, all of which purchases are not yet completed.

Q. I am only referring at present to the land east of Water street, or east of the west line of Water street.

A. Am I right in understanding you refer to these tracts marked E?

Q. I have reference to those and to any others in the same situation.

A. There are no others.

Q. Calling your attention to the tract which, I understand, is marked 5 on your books from L. P. Graham, how much did the company pay for that?

A. 1.6 acres, $1,650.

Q. I call you attention to the tract marked 6, called the Hammerslaugh tract. Where is it situated?

A. That is right in contact with the Graham tract. I have never seen the map of it, but know just where it is, because it was a body of land that was in the stock yards when I came here, and is what

the company claims as part of its lands; I think it is right in contact with the Graham tract; part of the same land.

Q. How much did the company pay for that?

A. $8,000 is marked here.

Q. That was in 1872, was it not?

A. Yes, sir.

Q. When was the L. P. Graham tract, No. 5, purchased?

A. It was in 1872 that the transfer to the stock yards company was made.

Q. There was some lots purchased from Hammerslaugh about the same time, lots 30 to 62, even numbers, on Armstrong street. What did the company pay for them?

A. The price paid was $1,500.

Q. Those were fractional lots, were they not?

A. Yes, sir; that is the way they are marked.

Q. Calling your attention to tract No. 7, being odd-numbered lots 15 to 47 on Armstrong street and even numbers 16 to 40 on Water street, what was paid for them?

A. For the odd numbered lots you named, $3,205; for the even-numbered fractional lots, $3,205.

Q. Both on Armstrong and Water street-?

A. Yes, sir.

Q. The whole cost of those lots on Armstrong and Water streets was $3,205?

A. Yes, sir.

663 Q. Tract 8, lots 2 to 14 on Water street and 1 to 13 on Armstrong street—how much was paid for them?

A. $1,519.

Q. When?

A. 1876.

Q. Tract 9, lots 2 to 28 on Armstrong street—how much was paid for them?

A. $540.

Q. When?

A. In 1876.

Q. Tract 13, N. Thayer, Jr., described in acres—what did that cost and when did you buy it?

A. $12,000; in 1878.

Q. Has that been sold or any part of it?

A. There was a piece of land sold out of that to the Kansas City, Wyandotte & Northwestern Railway Company.

Q. Was there any sold to anybody else?

A. Yes; there was a piece on 9th street, a triangular piece, that was sold from that. There was 3.477 acres sold to the Kansas City, Wyandotte & Northwestern Railway Company and 1.545 acres to Charles Merriam, Nathaniel Thayer, and Charles F. Adams. That was a piece that had been cut off by this other transaction.

Q. Did your company sell at the same time the tract described at lot D?

A. Yes, sir; .126 of an acre.

Q. Where is that lot D?

A. It is over on 9th street, opposite the Armour packing-house, on what is called Central avenue.

Q. On 6th street, is it not?

A. Yes, sir; 6th street in Kansas City, Kansas, and 9th street in Kansas City, Missouri.

Q. It is opposite Armour's?

A. It was not at that time, because their plant at that time did not extend to the street, but in a general way it is opposite Armour's packing-house.

Q. Any other land sold about there?

A. No, sir; I think that takes it all in.

Q. I mean at the same time to the same parties.

A. Yes; there were 5 other lots over there in the same locality.

Q. How much was that property sold for—that is, that which was sold to Merriam and others?

A. One hundred dollars is the consideration named. Those parties were trustees for other parties. There was only a nominal consideration paid.

664 Q. Who were the grantees named in the transfer which you have mentioned?

A. Merriam, Adams, and Thayer.

Q. Calling attention to tract No. 20, Shephard, 56 to 62, even numbers, on Water street—how much was paid for those lots, and when?

A. Eight hundred dollars; October 9th, 1879.

Q. Tract 30, from a man by the name of James, 42 to 48 Water street—how much was paid for those lots?

A. $5,400.

Q. Tract No. 31, from the same, 50 to 54 Water street, even numbers?

A. Eight hundred dollars.

Q. Tract 32, also from James, 49 to 53 Armstrong street, odd numbers—how much was paid for them?

A. $2,028.55.

Q. Tract 33, same party, lots 55 to 61 Armstrong street—how much was paid for them?

A. $2,971.45.

Q. What was the date of that purchase?

A. I think all of those were in 1886.

Q. Tract 21, from Swope to the stock yards company, tract mentioned in the deed as 7.68 acres—what was paid for that?

A. The consideration was $12,000.

Q. What was the date?

A. October 20, 1879.

Q. That tract is at the north end of the peninsula and is called Kaw point, is it not?

A. Yes, sir.

Q. What did the company do with that tract?

A. That was deeded to the Anglo-American Packing Company.

Q. That is the Fowler Company?

A. Yes, sir.

Q. There were three or four brothers to whom the deed was made?

A. Yes; Anderson Fowler was the one who did the business at that time.

Q. Did the company actually get twelve thousand dollars from the Fowlers at that time?

A. No, sir; it didn't get anything.

Q. It got nothing?

A. It got nothing except the consideration of the packing-house being established there.

Q. Then that was a donation?

A. Yes, sir.

Q. You also bought tract No. 22, I believe, from William Bigger, of 6.35 acres?

A. Yes, sir.

Q. When was that transaction?

A. October, 1879.

665 Q. How much did you pay for that land?

A. $18,500.

Q. What did the company do with it?

A. It gave it as part of the consideration for the establishment of the Fowler packing plant.

Q. That was a donation, was it?

A. Yes, sir.

Q. The company got nothing?

A. Nothing whatever; it made the transfer for a nominal consideration.

Q. Did your company give anything to the Fowlers in the way of stock?

A. It gave a large money consideration. I don't remember whether it gave any stock or not. I know the transaction very well, but I don't know whether I can give it in detail or not.

Q. How much was their entire donation—from the company to the Fowlers or the Anglo-American Packing Company?

A. Our donation to them was $80,567.18.

Q. Was the value of the land or the purchase price of it taken out of that?

A. I would have to refresh my memory on that point. That includes the amount paid for the land.

Q. That includes those two amounts paid for the land?

A. $30,500; yes, sir.

Q. In addition to that, didn't your company donate to them $40,000 of the stock of your company?

A. No, sir; my recollection is that they bought some stock of the company at par. I do not think there was any further donation made. I think that was the transaction; there was no stock donated at all; they took the money, and I think they afterwards turned it in and bought stock to that amount; but so far as our transaction with them went, it was a cash transaction of so much money and so much land.

Q. The Fowlers were at that time or about that time engaged in

the packing business in Atchison or East Atchison, were they not?

A. Yes, sir.

Q. This donation of lands was in 1879; when was the donation of money?

A. I can't tell that without looking it up, but it all followed as one transaction. They began building their house when they received the land, and probably the balance was paid to them after the building of the house was in progress.

666 Q. They were carrying on a pretty fair hog packing business at East Atchison at that time, were they not?

A. Yes, sir.

Q. And this donation was made in order to induce them to come here?

A. Yes, sir.

Q. They were building up quite a hog market at Atchison, were they not?

A. They did not think they were building up a market very fast. Their reason for coming here was that they thought that if they and others would come here it would make a market. They had to buy the most of their hogs in the country, as the Armours had to buy here. There wasn't much competition in either place.

Q. But you had to give them eighty thousand dollars in order to get them to come here?

A. That was the best price I could make.

Q. Their house at East Atchison was dismantled, was it not?

A. Yes, sir.

Q. They owned their own property there?

Mr. Dana objects to the question as immaterial. Objection overruled.

A. I think they did. I know that they owned their own plant, and I think they owned the land. I am not informed about that.

Q. Coming now to the tract described as 23, described in your record as lots 80 to 86, on Ewing street; when were they purchased?

A. For the four numbers—80, 82, 84, and 86—the consideration is given here as $3,100.

Q. Then you got some outstanding titles to the same lots from somebody else, did you not?

A. Yes, sir.

Q. The amounts?

A. In one case $620 and in the other case $2,480.

Q. Making the total cost of those lots of $6,200; is that correct?

A. Yes, sir.

Q. When did that take place?

A. In 1879. There was one other lot in there—78—that you did not call.

Q. This 78 is in the price of all these lots, 78 to 86, $6,200?

—. Yes, sir.

Q. Colonel Morse, has your company given any land to any railroad companies for terminal purposes or other purposes?

A. I don't know that I can answer that fully, except in one case. We gave a right of way for, I think, a nominal consideration to the Kansas City, Fort Scott & Gulf Company next to the river
667 here as a consideration for a right of way which they claimed, which ran right along the State line. It was a right of way to which they had no actual evidence of title, but they had been in possession for a long number of years, and they claimed it. It was desirable to move them over there on the river bank, and in order to do it we gave them a right of way.

Q. Have you made any donations of any tract or tracts to any railroad companies?

A. I don't think of any unless it might have been the right of way I have mentioned; I know that we have never made any considerable donations for that purpose, anyway, because we have not had the land to give.

Q. Now, do you know of any other tracts owned by the stock yards company in the vicinity of the north yards or the north peninsula, except what you have mentioned here and those that you purchased lately—that is, in 1894 and 1895?

A. I certainly don't think of any. No; I do not think of any; some of these tracts marked *c* do not stand in the name of the company at this time; the company has deeds to them, but they are not of record; the company did not care to publish the transactions, but I don't know of anything except those tracts of land. Of course I don't know whether you refer to that land which lies west of Water street; we own land there.

Q. No; I am referring to lands east of Water street and north of the Union Pacific tracks.

A. It would be impossible to testify to that exactly without checking up each one of these pieces that have been referred to and seeing whether we have left out any. There may possibly be something there that we have not referred to.

Q. I should be glad if you would check them over at some time and see if we have omitted anything.

Q. Colonel Morse, does your company own any land north of Central avenue, formerly called 6th street, in what was old Kansas City, Kansas?

A. None that I know of.

Q. There is a tract of land on this map described as belonging to the State Line Improvement Company; it is east of Ewing street, and comes out to Central avenue and State Line street?

A. Yes, sir.

Q. Does the stock yards company own that?

A. No, sir.

668 Q. Did it ever own it?

A. Yes, sir; that is the piece which I described as having been detached from this Graham and one other tract and sold to Merrian, Thayer, and Adams; it was cut off by these streets and was of no use for stock-yards purposes.

Q. The tract next west of that land enclosed in red lines and

marked as property of the Kansas City Stock Yards Company, that still belongs to the stock yards company?

A. Yes, sir.

Q. Is that separated into two tracts by James street?

A. Yes, sir.

Q. Does James street run through it, really?

A. Yes, sir; that is a paved street; there is a viaduct on it that comes right over to the stock yards.

Q. Is not that what was called the Graham tract?

A. Yes; that was part of the Graham tract.

Q. Was any street ever platted through the Graham tract?

A. Yes, sir; Wood street was opened through it.

Q. Not platted through?

A. It was not platted through, but it was opened through.

Q. Was James street ever platted through?

A. Oh, yes; I think it has been opened through there for a long time.

Q. At least James street is opened through that tract?

A. Oh, yes; it is a big thoroughfare.

Q. So that that tract that is marked as containing 1 421 acres is really in two tracts?

A. Yes, sir; cut in two by James street.

Q. About October, 1894, your company purchased lots 78 to 92 on the east side of Water street, did it not?

A. What is the number of the tract?

Q. 1 and 2, I think.

A. Yes, sir.

Q. How much did you pay for those eight lots?

A. Different prices. You mean in gross? I will give the separate considerations by lots: # 78, $4,266.40; # 80, $2,091; # 82, $2,091; # 84, $2,091; # 86, $2,091; # 88, $2,091; # 90, $2,091; # 92, $2,091.

Q. That was in October, 1894, was it?

A. Yes, sir.

Q. You bought those of whom?

669 A. Lot 78 from E. Evans; # 82 to 92 from Georgiana Brackett.

Q. Were those lots bought by the company?

A. Well, they were bought for the company, as I stated; the deeds have not been placed on record. The company has a deed from them.

Q. They are not held, then, by a tru-tess?

A. No, sir; the company has a deed. *A.* Lots 94, 96, 98, 100, 102, and 104 and 106 Water street.

Q. How much did you pay for those?

A. $2,400 for each lot; total, $16,800.

Q. When was that?

A. In October, 1894.

Q. Are each of these lots, from 78 to 106 on Water street, occupied by the stock yards company now?

A. We have not taken them into the yards yet, and they have not been used as yet for stock-yards purposes for the same reason.

By Mr. DANA: There is a railroad right across a portion of them?
A. Yes; a railroad comes in and has its terminal arrangements for unloading and loading stock.
Q. What railroad is that?
A. The Union terminal.
Q. There are no stock yards over there?
A. Not yet; no, sir.
Q. Lots 92, 94, and 96 on Armstrong street; how much did you pay for them?
A. Those were $2,400 each; $7,600 for the three.
Q. When were they purchased?
A. October, 1894.
Q. Lots 101, 103, and 105 on Armstrong street; how much did they cost the company?
A. Those cost $1,200.
Q. Lot 77, Armstrong street; how much did that cost?
A. $3,845.75.
Q. Lot 79, Armstrong street; how much did that cost?
A. $2,460.
Q. Are any of these last lots on Armstrong street within the limits of the stock yards?
A. No, sir; there are none of them included with the present area that is used for stock yards.
Q. Do you know where Winningham place is?
A. Yes, sir; I know where it is.
Q. Where is it?
A. It is a little block of ground fronting on Central avenue, east of what is platted here as Second street or Armstrong street.
670 Q. It is bounded on the north by Central avenue, and on the east by what?
A. By 2nd or Armstrong street; on the west by an alley; on the south by an alley.
Q. Is that divided into blocks or lots?
A. It is divided into lots.
Q. How are they described?
A. By letters.
Q. How many subdivisions are there?
A. There are six subdivisions.
Q. Do you own any of them?
A. Yes; we own B, C, and D.
Q. How much did you pay for B?
A. $1,703.67.
Q. How much for C?
A. $1,710.32.
Q. How much for D?
A. $1,793.06.
Q. When was that transaction?
A. In October, 1894.
Q. Are those lots in Winningham place within the limits of the stock yards?
A. No, sir; not within the limits of the improvements.

Q. Do you own lot 83 on Wood street?
A. Yes.
Q. How much did you pay for it?
A. It is a fractional lot; we have just four feet off of the north side; $503.56.
Q. Do you own lot 85 on Wood street?
A. Yes, sir.
Q. How much did you pay for that?
A. $2,580.04.
Q. What is the date of that purchase?
A. November, 1894.
Q. Was it not April, 1895?
A. Yes; the conveyance to the company was in April.
Q. Lot 95, Wood street; do you own that?
A. Yes, sir.
Q. How much did you pay for it?
A. $2,401.30.
Q. When?
—. In November, 1894.
Q. Do you own lot 96 on Wood street?
A. Yes.
Q. How much did you pay for it?
A. $2,402.10.
Q. When?
A. November 20, 1894.
Q. Do you own lot 99 on Wood street; and, if so, when did you purchase it and how much did you pay?
A. Yes; $2,770; December, 1894.
Q. Do you own lot 101, Wood street?
A. Yes, sir.
Q. How much did you pay for it?
A. $2,750.
Q. When?
A. December, 1894.
Q. Do you own the west half of lot 103, Wood street?
A. Yes, sir.
Q. How much did you pay for it?
A. 2,759.20.
671 Q. When was that purchased?
A. December, 1894.
Q. Do you own the west half of lot 104 Wood street?
A. No, sir.
Q. Do you own the west half of lot 105 Wood street?
A. Yes, sir.
Q. How much did you pay for it?
A. $2,754.
Q. Are there any of those lots on Wood street just described which are within the limits of the stock yards?
A. No, sir; not within the limits of the improvements.
Q. There is a tract of 1.760 acres from Barrel purchased in November, 1894. Do you know such a tract?

A. Yes, sir.
Q. How much did you pay for it?
A. $2,500.36.
Q. When?
A. In November, 1894.
Q. Is that within the limits of the stock yards?
A. No, sir; not within the limits of the improved property.
Q. Where is it situated?
A. It is situated west of Water street, bounded on the north by Central avenue, on the west by the river, on the south by the central line of 7th street extended west to the river.
Q. Have you another tract of land somewhere in that vicinity purchased from Barrel in 1895, January 17th?
A. Yes; 1,250 acres.
Q. How much did you pay for it?
A. $14,036.10.
Q. Do you understand that land to be south of Central avenue and on 6th street?
A. Yes, sir.
Q. And west of Water street?
A. Yes, sir.
Q. Is either of these two tracts of 1.760 acres and 1.250 acres within the limits of the stock yards?
A. No, sir.
Q. Colonel Morse, your company did own a lot known as D in an addition of Armstrong, did it not?
A. Yes, sir.
Q. When was it purchased?
A. February 18, 1879.
Q. How much was paid for it?
A. $5,000.
Q. The company does not own it now?
A. No, sir; that was part of the conveyance I spoke of.
Q. Do you own lots 144 to 150 and fractional lot 152 on Water street?
A. Yes; $600 was the consideration.
Q. When?
A. In 1879.
Q. Does your company still own them?
A. No, sir.
672 Q. What became of them?
A. They were sold for the same consideration.
Q. To whom?
A. To the Kaw Valley Townsite & Bridge Company.
Q. When were they sold?
A. January 17, 1880.
Q. Did your company purchase from a man named Van Fossen lots 108 to 118, even numbers, on Water street?
A. Yes, sir; August 19, 1879; $1,000.
Q. What became of those lots; do you still own them?
A. No, sir; those were sold soon afterwards to the Kaw Valley

Townsite & Bridge Company for the consideration of $1,000, January 17, 1880.

Q. Did your company ever own a tract of land purchased from Sophia Halleroit, described as south of 6th street and 15 feet west of the State line, a tract 78.4 feet north and south by 38 feet east and west?

A. No, sir; never owned it.

Q. Where is the Armour Packing Company's plant?

A. The eastern boundary of it is on the State line between Kansas and Missouri; it lies generally in a northerly direction from what we call our north yards, extending up north from the point where the State line intersects the Missouri river.

Q. Where did the Armours come from; did you induce them to come here?

A. Not originally, but some years ago, when there was a proposition in regard to building a very extensive beef-house either at this point or at Omaha and we had very good reasons to know that the plant would probably go to Omaha, we made inducements for the Armour Company to establish their present beef-house here; they had done some beef business before, but their business had been mainly in hogs.

Q. How much did it cost to induce them to come?

A. It took half a million dollars.

Q. Paid by the stock yards company?

A. Yes, sir.

Q. How was it paid?

A. The consideration was that that amount of money should be paid, and Mr. Armour took it in stock.

Q. Do they still hold it?

A. No, sir; I think it went to P. D. Armour, in Chicago, and he has disposed of it to different members of his family and others.

Q. Coming now to the accretions or the ground west of Water street near the yards other than the deeds which have been
673 mentioned here for the two little tracts of 1.760 acres and 1.250 acres, under what deeds do you claim the accretions west of Water street?

A. This one which is marked 22½, accretion; I do not know just what it describes; it is from M. B and Harriet R. Newman, by W. H. Ryus, sheriff.; that is the way the conveyance reads; it is a conveyance to an undivided one-tenth interest in and to a certain tract of land commencing at the center of the crossing of Pacific avenue and Water street, in Kansas City, Kansas; then-e northward along said Water street 846 feet, thence west to the Kansas river, thence up said river to a point opposite the beginning, thence eastward to the beginning; also the right, title, and interest of the said William B. Newman in and to the streets and alleys located in Kansas City, Kansas, by ordinance No. 62.

Q. What is the date of that conveyance?

A. July 19, 1876.

Q. Are there any other deeds to which you claim right to that land?

A. I don't know of other deeds.
Q. What is the consideration for that sheriff's deed—what did you pay?
A. $19.45. The Graham tract would include a part of these accretions.
Q. How much of the accretions?
A. Well, it would be a strip 173 feet in width, running through to the river.
Q. Is this tract of land that you claim west of Water street and south of Central avenue within the enclosures of the stock yards company?
A. There is quite a large area of it that is being used as a dumping ground for cleaning the yards, but it is not enclosed.
Q. How much of it has been so used?
A. I could not answer that. I understand that the survey which is being made will show that exactly.
Q. You do not know the exact quantity of accretions?
A. No, sir; I could not give them.
Q. It is still subject to overflow in anything like high water, and part of it during low water in the Kaw and Missouri rivers?
A. Yes, sir; largely.
Q. Under water, is it not?
A. Yes, sir; quite a large portion of it is under water.
Q. A great deal of it still has the appearance of a sand bar, has it not?
674 A. Yes; it is quite low. It is covered in extreme high water, but in ordinary stages of water it is well out of the water—high and dry.
Q. It would be more appropriate to call it a sand bar than anything else, wouldn't it?
A. The entire Kansas City, Kansas, was a sand bar. It was all formed from the river. This is forming in the same way that the rest of this peninsula was formed.
Q. This land is something like Richard the Third—has come into the world scarce half made up?
A. Poetic license might admit the comparison.
Q. The record of the title to it is as you have given here, and that is all you know about it?
A. I am not familiar with those earlier transactions; I know we have been in possession of it ever since we have been here.
Q. How long has it been used as a dumping ground?
A. I could not say.
Q. Was it used for that purpose when you came here?
A. I think so, to some extent, for the yards on that side.
Q. There wasn't very much in the yards on the north side at that time?
A. Not very much.
Q. These grounds west of Water street have never been enclosed, have they?
A. No, sir.
Q. They have no improvements on them?

A. No, sir; unless some part of these driveways cross them. I am not sure about that.

Q. You are just making that ground, are you not?

A. It is being made to a certain extent. The use of the ground for dumping purposes naturally fills it up, so that gradually it acquires a higher level.

Q. The river helps you to make the land?

A. Yes; to some extent; but not very much after it gets to a certain height. There is now very little accretion from the river.

Q. By what title do you claim these accretions to this land west of Water street, and of the north yards?

A. By virtue of these deeds that have been mentioned.

Q. Do you know of any other holdings by the company in that peninsula north of the yards other than than those we have mentioned here? If so, please state what they are.

675 A. I don't know whether there are any others. I could not tell without checking it up.

Q. You will have it checked up, to be sure about it?

A. Yes; as soon as I can get a list of what has been called off.

Q. Coming, now, to what is called the quarantine yards, on the west or left bank of the Kansas river, from whom was that ground purchased by the stock yards company marked C on the map in evidence?

A. I think all from N. McAlpine.

Q. How much ground did you purchase from him?

A. I think 27.860 acres.

Q. When did you make that purchase?

A. November 17, 1886.

Q. How much was paid for it?

A. $97,511.35.

Q. Have you sold any part of it to anybody?

A. There was a certain part of it conveyed to Swift & Company for the consideration of one dollar—12.515 acres.

Q. Was that a gift to Swift & Company?

A. Yes, sir.

Q. In what direction was that from the lands that remained?

A. That was out West.

Q. So, then, your company still held the land next to the river?

A. Yes. I think there was a conveyance of .65 of an acre for a right of way taken out of that tract for the Chicago, Kansas & Nebraska Railway Company.

Q. Didn't the Union Terminal Company take some land too?

A. I guess they did. They took a right of way between the Swift tract and what remained. I think the exact area taken by the Union Terminal Company was .110 of an acre right near the river bank, within a very short distance from the river bank.

Q. There was an award made by the condemnation commissioners for the land taken in the qurantine yards, was there not?

A. Yes, sir.

Q. How much was allowed for the land taken?

A. I cannot answer that just now.

Q. How much did you get for the .65 of an acre taken by the C. K. & N. R'y Company?

A. I would like to correct my statement about the C. K. & N. There was nothing taken by the C. K. & N. from the stock yards company on the west bank of the river. I think the land
676 they took was south of the stock yards property and south of Swift & Company.

Q. Where did you get Swift & Company to come from?

A. Chicago.

Q. How much did it take to induce them to come?

A. The amount altogether was $62,175.

Q. That was a bonus, was it?

A. Yes, sir. That included the 12 435 acres of land.

Q. How much was the land put in at?

A. The amount which was regarded as the cost of the land was $43,759.13.

Q. Now, the difference between that and the total bonus was paid how?

A. I think in money.

Q. When was this donation of land made to Swift & Company?

A. I think it was in 1886 or 1887.

Q. Did you donate to Swift & Company of the stock of your company?

A. I should prefer to wait until I get that information before answering, because it was a good while ago, and I don't remember clearly about it.

Q. Does your company own a tract of ground north of the quarantine yards and close to the railroad bridge of the Union Pacific and Missouri Pacific Railway Companies?

A. Yes, sir.

Q. From whom did you purchase that tract, being the tract marked D on the map?

A. That was purchased from the Riverside Improvement Company.

Q. How much was paid for it?

A. $35,000.

Q. That is comparatively low ground?

A. Yes, sir.

Q. About how much is it below the level of the ground used by the stock yards company for stock-yards purposes?

A. I think it averages seven or eight feet. I have no exact knowledge of it.

Q. The Union Terminal railway also runs across the tract?

A. Yes. They condemned a strip across it.

Q. Do you know how much?

A. I can't tell from these descriptions.

Q. We will pass that for further information. Did your company buy a tract of land of about ten acres from the Kaw Valley Townsite & Bridge Company just south of Kansas avenue in Armourdale?

A. Yes, sir.

Q. How much did you pay for it?
A. $30,000.
Q. What did you do with it?
677 A. That was conveyed to the Kingan Packing Company.
Q. When did you make the purchase of the ten-acre tract?
A. May, 1887.
Q. Now, you say you conveyed it to the Kingan Packing Company?
A. It was not in that name; it was in the name of Sinclair and others.
Q. Sinclair, Reid, and others?
A. Yes, sir; they were trustees for the Kingan Company.
Q. That was a gift?
A. Yes, sir.
Q. For how much?
A. For one dollar.
Q. Did you get the dollar?
A. I think it was not paid as a matter of fact.
Q. Now, Kingan & Company were engaged in the hog-packing business in Atchison, were they not?
A. No, sir; they were in Indianapolis.
Q. They had a house at Atchison, did they not?
A. I never knew of it.
Q. Don't you know that they left Atchison to move to Kansas City?
A. I don't know that they ever did. They had been buyers on this market for a number of years for their Indianapolis house. They had a house in Cedar Rapids, Iowa, but I don't know of any others. If they had a house in Atchison, I never heard of it.
Q. Didn't they build up quite a market there after the Fowlers had left?
A. They may have, sir. My dealings were entirely with the Indianapolis people.
Q. You didn't even know that you had competition in hog packing and in the hog market north of this place, fifty miles or less?
A. I never knew of any competition after the Fowler Brothers left there.
Q. You don't know that Kingan & Company were there and that the Reids lived there before the Fowlers moved away?
A. I did not know that; no. If I ever heard of it, it is something that has entirely passed from my mind; it has made no impression upon my mind.
Q. Don't you know that they had a packing-house in East Atchison rented from Morris Butt & Company or from Jacob Smith that they were running in East Atchison?
A. The Kingan Company?
Q. Before they came here?
A. No, sir; I don't know anything about it.

By Mr. DANA: Do you mean East Atchison, Missouri?
By Judge MARTIN: Yes; East Atchison or Winthrop, Missouri.

678 A. If that is the fact it would seem impossible that I should never have heard of it, but at the same time I don't remember a thing about it.

Q. Didn't you have negotiations with the Reids?

A. No, sir; I didn't know of them; never saw them until they came here as managers for the Kingan Company.

Q. Don't you know that they left East Atchison and that they lived at Atchison?

A. No, sir.

Q. Don't you know that George Fowler lived in Atchison before he came here?

A. I knew that he had charge of a house there, but I didn't know about his living there.

Q. How much besides this $30,000 worth of land did you give to the Kingan Company to induce them to come here?

A. That was all we gave them, I think.

Q. When was that property conveyed to them?

A. The deed is May 3, 1887.

Q. That was an absolute gift of the land, was it?

A. Yes, sir.

Q. You gave no stock nor any other aid?

A. No, sir.

Q. What is the present condition of that property?

A. They operated it for about ten years, and then it was burned, and it has lain idle ever since then. They have notified me at various times that they expected to do something with it, but they have not done anything up to this time.

Q. They still own the land, so far as you know?

A. I know that they do. They have not made any conveyance of it. I have watched that very carefully.

Q. Will you get that further information now?

A. There was nothing given except for land. It was put in, as Mr. Richardson informs me, at a valuation of $62,145.

By Mr. DANA: You are speaking of Swift & Company?

A. Yes.

Q. How do you get your figures of $62,000?

A. I presume it was done for the reason that they received the high part of the land. The other part, which was about an equal quantity, was low, which we have since improved at an expense of six or seven thousand dollars an acre by filling it up to the grade of the other. I presume there was an arbitrary valuation

679 put upon it in that way. The whole cost $97,000, and this was put in at about two-thirds of the cost of the whole.

Q. There was another firm of Schwarzschild & Sulzberger who established themselves down there in the same neighborhood?

A. Yes, sir. A. Yes, sir; a little further south than Kingan & Company.

Q. How much did it take to induce them to come here?

A. We paid them one hundred thousand dollars in cash.

Q. In stock?

A. No, sir.

Q. They bought their own land?

A. They bought a plant which was there with land attached to it that had belonged to an earlier company.

Q. How far is it from the Kingan plant?

A. I should judge about a quarter of a mile; perhaps a little more than that.

Q. Where did Schwarzchild & Sulsberger come from?

A. From New York city.

Q. They are still here?

A. Yes, sir.

Q. Did you pay anything further in the way of gifts or donations to any other packing plants or manufacturing institutions to come here?

A. There was one small concern called the Hollis Company that came here from the East—from Brighton, I believe—that established a sheep-slaughtering house. We gave them 1.38 acres of land, which cost $2,070.10. There was no money or further consideration. They operated for a number of years and finally gave up.

Q. Have you given any more money or lands?

A. No; I think I have mentioned all the items.

Q. Didn't you make a bonus or subscription to somebody in 1890 of $2,500 to establish something?

A. I don't remember. We have, of course, from time to —, given small amounts to various things, but I don't remember them; I have no note of them here.

Q. When did you buy the land given to Hollis?

A. In 1884.

Q. That was to establish a sheep market?

A. Yes, sir.

Q. This man Hollis and the others were Boston men?

A. Yes; I think they came from there; they had a place at Brighton, near Boston.

Q. Did the company ever buy a tract of land of about 79
680 acres from a man named Johnson in 1884?

A. Yes, sir.

Q. How much did you pay for it?

A. $60,000.

By Mr. HITE: Where is that located?

A. In 25, 11, 25.

Q. What did you do with it?

A. We exchanged it for 65.370 acres in what was known as the Armstrong tract.

Q. With whom did you exchange it?

A. With the Kaw Valley Townsite & Bridge Company.

Q. Was that an even-up trade?

A. Yes, sir.

Q. Now, what land was it that you got from the Kaw Valley Townsite & Bridge Company in change for that?

A. It was a tract of 65.370 acres out of what is known and called as the Armstrong tract.

Q. Do you know what section?

A. 20, 11, 25 east.
Q. Do you still own that?
A. Yes, sir; that is part of the tract I described in my direct testimony.
Q. Is that where the new yards were to be located?
A. That was part of the land purchased for that purpose.
By Mr. HITE: That is the tract that has been designated as the Argentine land?
A. Opposite Argentine.
Q. You acquired that tract, among others, for the purpose of establishing new yards?
A. Yes, sir; it was to complete the tract up there of about 140 acres.
Q. How much did it cost you?
A. $60,000.
Q. Actual cash?
A. Yes, sir.
Q. What other land did you purchase to use in connection with that for the improvements up there?
A. We purchased what was known as the Dryer tract; that contains 74.840 acres. We paid $22,452 for it.
Q. Does the company still own it?
A. Yes, sir.
Q. Does it stand in the name of the company?
A. No, sir; it stands in the name of Burnham. Excuse me; there is one tract in the name of the company and the other in the name of John A. Burnham.
Q. Do the two tracts adjoin each other?
A. Yes, sir.
Q. They make a solid piece of ground?
A. Yes, sir.
Q. And that solid piece of ground was designated as the new yards?
681 A. Yes; on some of the maps of Wyandotte county, I think, you will find it put in that way.
Q. Were there any improvements on those lands when you bought them?
A. No, sir; none at all, except some small original farm buildings.
Q. Has the property been improved since?
A. No, sir; except that at one time, and perhaps more than once, some slight work was done on the river front to prevent the river from cutting the land away; some jetties were put out there.
Q. Do you know how much they cost?
A. It was a very small amount; it was not permanent work.
Q. A thousand dollars or so?
A. We could probably find out, but it was such a small matter that it is hardly worth considering; it was done at low water, with material right on the ground there.
Q. Colonel Morse, you put valuations on your lands for the purpose of regulating the amount of stock that is issued by the company?

A. Yes, sir.

Q. And the stock is aimed to be larger or at least as large as the valuations that are placed upon its lands by the company?

A. Yes, sir.

Q. Showing the witness the first line of a statement as follows: "221.876 acres in Wyandotte county, Kansas, new yards, at average cost per acre, $3,356.40, $744,705.35." I will ask you if that statement was made out by you or under your direction or by the officers of the company.

A. It was made, I presume, by Mr. Richardson. I have never given any particular direction about it; it is a matter of the book account, and I presume it is a correct summary of that particular item from the books.

Q. Where was the remainder of the land—about 140.21 acres?

A. I think that statement shows transactions on both sides, both the values and the sales out of it; that statement of 221.876 includes this 142 acres, and it includes the 79 145 acres which have been sold out. It is made up of those two items, 142 and 79.145. One side of the statement is the sales, the other side the purchases; 79 145 acres have been taken out, leaving the balance of 142.731 acres. It is given as on hand in Wyandotte county, Kansas, at the average cost.

Q. That includes the two tracts of 74.84 and 65.37, which
682 would be 140.21?

A. Yes; but there is also a little piece of two acres and a fraction.

Q. Now, this has never been used for stock-yards purposes?

A. No, sir.

Q. The company still owns that tract except the Johnson tract?

A. It does not own the Johnson tract; it exchanged that for the Armstrong tract. There is a tract of 2.666 acres.

Q. How much did the company pay for that?

A. $5,505.60.

Q. That was purchased when?

A. In November, 1885.

Q. And the company still owns it?

A. Yes; with the exception of a right of way that was bought in connection with *with* these other properties for the Belt Railway Company, which was expected to furnish the railroad facilities for these grounds and was building up in that direction, and this was a small piece of land that was owned, I think, by two or three different parties, and in the railroad in going across it would cut it up so that it was thought cheaper to buy the whole tract and give the right of way out of it.

Q. Does your company own or did it ever own lots 1 and 2, in block 27, in Riverview addition?

A. Yes, sir; it did own them.

Q. When did it get title to them?

A. August 12, 1891, the company got title.

Q. How much did you pay for them?

A. If you will allow me, I should like to explain that transaction.

These were two lots that had belonged to a man in the employ of the company at one time. He proved to be a defaulter. In settling up these lots were conveyed to Charles W. Courtright, the auditor of the company. He held them until 1891 and then conveyed them to the company. The lots had never any connection with the lands of the company in any way and were taken to secure us for the amount of the company's money which had been taken by this employé. They have now been sold, I think.

Q. How much did you get out of them?

A. $759.

Q. When did you get that?

A. Some time during 1896.

Q. Where is Riverview addition?

A. It is over north of Armstrong, near the Union Pacific shops, where the Cypress yards are.

Q. How near are the lots to the Cypress yards?

683 A. They are up in the hills there somewhere; I never saw them and don't know where they are.

Q. Are there any other lands owned by the Kansas City Stock Yards Company in the vicinity of the quarantine yards or of the unused tract north of the quarantine yards, or in Kansas City, Kansas, Wyandotte, Armourdale, or Armstrong, to which the company has any title other than the tracts mentioned?

A. I think there are none other, unless in that first tract E marked on the map; there may have been some omitted from the descriptions.

Q. I mean west of the river?

A. I think there are no others west of the river; I think we have covered them all.

Q. Have you covered all *that* the lands that you know of that are in Kansas belonging to the company—I mean in Wyandotte county?

A. I think so, with the possible exception that we may have missed something over in the north yards; that can only be determined by taking the list which we have gone over and checking over the records of the company. I will do — at the close of my testimony. So far as I know, it includes all the lands in Wyandotte county, Kansas.

Q. Has the company any lands in the State of Kansas outside of Wyandotte county?

A. No, sir.

Q. Has the company any other lands that you know of in any other States than Kansas and Missouri?

A. It has not in its own name, but it owns in fact a tract of about 300 acres in Salt Lake City, Utah, which comprises the Salt Lake City stock yards and is used as stock yards.

Q. Are those yards now being operated by your company?

A. No, sir.

Q. They are occupied by persons who pay rent for them?

A. Yes, sir.

Q. How much do you get a year from them?

A. The cash rent is nominal; they only pay five hundred dollars cash, but they maintain the property and keep it in repair.

Q. Don't you draw dividends on the stock of that company?

A. No, sir.

Q. Didn't you take some stock?

A. There is no company now; the company was sold out practically by the foreclosure of the mortgage.

Q. So that the Kansas City Stock Yards Company practically owns it?

A. Yes, sir.

684 Q. Now, outside of *of* the land that is occupied by the stock yards, what improvements are there on the property?

A. I think no improvements except one or two railroad tracks. There is one long railroad track. I don't think there is anything belonging to the company outside of the yard buildings, hog sheds, etc., but there is nothing outside of the improvements.

Q. Do you derive any revenue from those yards at present except the five hundred dollars a year?

A. That is all that we derive from them directly, but indirectly we have the benefit of all the business that they can direct here.

Q. How much does that property stand the company?

A. About $60,000.

Q. You may now, if you like, give us the information in regard to the terminal company. First state the quantity of land taken out of the quarantine yards.

A. .650 acres.

Q. How much was allowed for the land and how much as damages to the remainder of the land?

A. I don't know that anything was allowed for damages; I have only one item of $4,420. I understand that was allowed for just what they took.

Q. Now, as to the tract which has been described as D, north of the quarantine yards. How much was taken out of that tract?

A. .751 acres.

Q. How much was allowed for the land and how much for damages to the remainder of the tract?

A. There was only one allowance, $2,853.

Q. You received the money?

A. Yes, sir; the condemnation was made; there was an appeal taken from the award; it went along for two or three years, I think, and we finally took the money.

Q. On each tract?

A. Yes, sir.

Q. The case was never tried?

A. I don't remember about that; I think probably it was not. We took the money.

Q. Now, going back a moment to tract B; that is the main yards in Kansas. I believe you stated that the stock yards company conveyed a certain tract to the Rock Island Company for a right of way down near Turkey creek?

A. Yes, sir.

Q. Was that the C., K. & N.?
A. Yes, sir; the Rock Island in ownership.
Q. How much was there of that land?
A. That was .189 acres.
685 Q. What was the price?
A. $4,444.47.
Q. Now, the company conveyed a little tract of land there to the county of Wyandotte, did it not?
A. Yes, sir.
Q. For a highway connecting Kansas avenue on the Kansas side with 19th street on the Missouri side?
A. Yes, sir.
Q. How much was there of that land?
A. .462 of an acre.
Q. How much did the company get for that?
A. There was no consideration for that. The company donated it to the county.
Q. Do you know of any lands that have been purchased south of the main yards in Kansas in the tract heretofore described as B other than those that you have mentioned in your testimony?
A. No, sir; I don't know of any other purchases.
Q. Did your company in 1890 pay a bonus for locating some manufacturing plant in and about Kansas City—a bonus of $2,500?
A. Yes, sir; it did.
Q. That was paid in cash?
A. Yes, sir.
Q. What was it?
A. That was in reference to this property which we have described as the yards opposite Argentine. It was a company that was going to engage in some manufacturing there. The money was paid to B. T. Whipple & Company, who are engaged in the real-estate business. It is my impression that eight or ten thousand dollars was contributed to buy the lands that lay about there in order to get them to establish up there, and this was the amount which the stock yards company paid. That is my remembrance of it.
Q. You wanted to enhance the value of the land?
A. Yes; to encourage other manufacturers to go in that vicinity.
Q. What kind of a manufacturing enterprise was it, do you know?
A. I was trying to think what it was. I think it is some kind of a machine-shop plant.
Q. It had nothing to do with the packing-house business?
A. No, sir; it was not connected with it at all.
Q. Nor with the stock yards?
A. Nor with the stock yards.

Here the master arose and adjourned until 9.30 a. m. Tuesday, May 26th, 1897.

686 9.30 A. M. TUESDAY, *May 27th*, 1897.

Cross-examination of Colonel MORSE continued by Judge MARTIN:

Q. Are lots B, C, and D in Winningham place in a body?

A. Winningham place, as marked on this plat, which I presume is correct, consists of lots A, B, C, D, E, and F. B, C, and D are the ones owned by the company.

Q. Are they in a body?

A. Yes, sir.

Q. Taking them together as one tract, what is their dimensions?

A. 60 x 86 feet. 60 feet on Central avenue and 86 feet in width. There is an alley ten feet wide behind them.

Q. Has the tract of land west of Water street, which you claim and which has been spoken of as accretions or sand bar, ever been taxed?

A. I think so. I could not tell that without looking at the descriptions in the tax receipts.

Q. (Showing the witness a paper marked statement of cash dividends paid by the Kansas City Stock Yards Company from organization to December 31, 1896.) I will ask you if that is a statement prepared by your company.

A. Yes, sir; that is a copy of a statement which was prepared from the books of the company. I will get the original.

Q. Refreshing your memory from this statement from your books or any other sources that you may desire, I will ask you what was the capital stock of the stock yards company or its predecessor in 1872.

A. $96,000.

Q. Was that cash capital?

A. I don't know as to just what had been paid in. I have no information in detail respecting the accounts of the company back of 1879. I have never examined them. That is the way the capital stands on the books of the company. It has just been taken off and given to me in the form of this statement.

Q. When was the capital stock next increased?

A. In 1875.

Q. Wasn't it increased in 1874 and carried into the statement of 1875?

A. I do not know when the action was taken for the increase. I should have to look into the record.

Q. What was the increase in 1874 and carried into 1875?

A. From $96,000 to $144,000. That would be $48,000.

Q. Wasn't it increased in 1874 by $48,000 and carried into 1875?

687 Q. I could not answer that without reference to the item.

Q. From what source was that increase; was it a stock dividend or was it paid for in cash?

A. I do not know.

Q. You can ascertain from the books?

A. Yes, sir.

Q. Will you do so?
A. Yes, sir; that stock was issued as a dividend.
Q. That came out of the earnings?
A. No, sir; that was an issue direct of so much stock to the stockholders.
Q. It was in consideration of the income of the company, was it not?
A. No, sir; not the whole of it in 1874. The dividend paid was $31,890, and the net earnings were $33,600, so that this issue of stock represented a direct issue, with the exception of the difference between $31,890 and $33,600.
Q. So that the increase of stock to the extent of $48,000 at that time did not represent any cash coming to the company from the stockholders at that time?
A. No, sir.
Q. That was in excess of the net income for that year, then, and it would be simply carried into the next account, would it not?
A. If it was in excess of the net income it would have been represented by stock or else by the sale of stock for cash. I don't know that it would be — any other case except that.
Q. I wish you would look at the stock ledger and see if that increase of $48,000 is simply a stock dividend.
A. That is what I said; it is a stock dividend.
Q. Now, in 1875, was there another stock dividend of $48,000?
A. Yes.
Q. That would increase it to what?
A. That would make $192,000; but there seems to have been four thousand dollars at some time between the time when the capital was $96,000 and this time in order to make it even; that is a common thing.
Q. The first increase reported in 1875 was to $144,000?
A. Yes; and there must have been an issue of $4,000, as I explained.
Q. Now, in 1876, was there another increase of stock?
A. Yes; there was $69,050 sold for cash, at par, and $66,250 was issued in the form of dividends.
Q. That was a stock dividend?
A. Yes, sir.
688 Q. You reported the stock in 1876 as being $265,000. How was that made up?
A. From $144,000 to $265,000.
By Mr. HITE: From $196,000.
By Judge MARTIN: Yes; you might say from $196,000. Now, in your statement here, you do not report any $196,000.
A. No; that never was the amount of stock on any December 31st: that was the reason of that. These statements are the amounts on the books of the company at the end of the year—each year.
Q. Then there would be a difference between $192,000 and $265,000 of $73,000?
A. Yes; that would be the difference, but there is four thousand dollars at some time after it was $96,000 and before these dividends

were issued. There was four thousand dollars issued to make it an even hundred thousand dollars. That accounts for that four thousand dollars difference.

Q. Was that four thousand dollars issued as a stock dividend or for cash?

A. I do not know that my explanation would be very clear, because I admit that I do not understand the point exactly myself and could not without going very carefully into it, but I understand from what I am told that the original capital was $100,000; $96,000 of this was subscribed and $4,000 of it was set aside to be taken by the railroads, which were then supposed to be parties in interest. This four thousand dollars was never taken by them, and was afterwards charged back into the capital.

Q. The next report of the amount of your capital stock is for 1877, $662,600. That would be an increase, I believe, of $397,600. Was that a stock dividend?

A. The amount of the increase was $331,300, which was a stock dividend, and made the capital $662,600.

Q. It was $265,000 by the last report.

A. I think you have not the amount which was sold, $69,050.

Q. You have already given that.

A. Then $66,250 was issued in 1876. I gave that once before, but probably it escaped you; that made the issue at that time $331,300.

Q. Then how is the rest of the $662 600 made up?

A. There was an issue of a stock dividend in 1877 of $331,300.

689 Q. The $331,300 and the $31,300 were both stock dividends?

A. Yes, sir.

Q. There is still necessary to make up the $662,600, $35,000, is there not?

A. No, sir; I think not. According to the memorandum I have here, after that $196,00–, there were two items, $69,050 and $66,250; that made $331,300.

Q. That was a stock dividend?

A. Yes, sir.

Q. Well, then, you gave $66,300 to be added to the $331,300, which would make only $397,600, which is the difference between the $265,000 reported in 1876 and the $662,600 reported in 1877.

A. The items, just as I have them, make that up, according to my figures. I will just call them off. Beginning, first, with an even $100,000; then two issues of $48,000 each, making $96,000; total, $196,000; then an issue of $69,050, and then an issue of $66,250; that made the amount $331,300.

Q. Now, how much do you make the stock dividends added to the capital stock of $196,000?

A. Omitting the stock sold for cash?

Q. Yes.

By Mr. HITE: Up to what time?

By Judge MARTIN:

Q. To make up the difference between $265,000 and $662,600—what makes up that difference of $397,600?

A. Those three dividends of stock, $331,300 and $66,250.

Q. You have given the $66.250, Colonel.

A. Yes; I think if you will take the items exactly as I have given them, you will see exactly what I am trying to show; there was first $100,000 of stock; then two issues of $48,000 each, or $96,000; then an issue of $69,050; then an issue of $66,250.

Q. Doesn't it require a stock dividend of $397,600 to make up the difference between $265,000, already accounted for, and $662,600?

A. $397,550; yes, sir.

Q. Is it not six hundred even?

A. No, sir; because there is fifty dollars in that sold for cash.

Q. Then, in 1877 you had $662,600 of capital?

A. Yes, sir.

A. Made up as you have indicated?

A. Yes, sir.

Q. In 1878 was there another increase; and, if so, how much?

A. There was $37,400 sold for cash.

690 Q. Was there another one of five thousand dollars?

A. That was a sale for cash in 1879.

Q. That runs into 1879, does it?

A. Yes, sir.

Q. Those two items would be $42,400 sold for cash?

A. Yes, sir.

Q. That would bring it up to $700,000?

A. $705,000; $5,000 in 1879.

Q. Yes; to $705,000 in 1879?

A. Yes, sir.

Q. Your next statement of the amount of the capital stock is $994,700. Is that correct?

A. Yes; in 1881.

Q. There were stock dividends in 1879 amounting to $274,700, were there not?

A. No, sir; not in 1879. There were no stock dividends in that year.

Q. Was it in 1880?

A. Yes, sir.

A. Yes; in 1880 there was an issue of $235,000.

Q. What time was that, Colonel Morse?

A. I haven't the date here. I can get it. In the same year there was $40,000 stock sold for cash, making a totel of $275,000.

Q. To whom was that sold?

A. It was sold to some of the Fowlers connected with the Fowler packing-house.

Q. Wasn't that a gift or donation to the Fowler brothers?

A. I should have to look that up to see whether it was a direct gift or whether it was a sale at so much for cash; of course, in our books here, it is so much stock sold.

Q. Do you keep such a thing as a cash book?

A. Yes, sir.

Q. Would that show the actual amount received?

A. Yes, sir; I can find that out if you desire it.

Q. How do you make up the difference between the $705,000 of stock reported in 1879 and the $994,700 reported in 1881?

A. $249,700 issued as a stock dividend and $40,000 reported as sold for cash, and in 1881 $15,000 sold for cash.

Q. That does not make it, does it?

A. Yes; less three hundred dollars that was not issued of what was included in that item of $289,700; there is a difference of $300 there which I understand was not issued, and the amount
691 on which the dividends were paid, according to the statement of which you have a copy, was $994.700.

Q. Now, the increase from the last amount reported as $705,000 would be $274,700, wouldn't it?

A. $289,700, I make it.

Q. Now, that was all stock dividends except $15,000, was it not?

A. Except $55,000.

Q. That is, including the Fowler transaction, if that was a sale?

A. Yes, sir. The date which you asked me for as to that $235,000 was June 1, 1880.

Q. Now, there is no report of any stock transaction in this report for 1880. There was stock dividends of $274,700 in 1879 reported in 1881.

A. It was during those three years in which there were no cash dividends; it was 1879 to 1881.

Q. I am not speaking at all of cash dividends at all, Colonel; but you add the $15,000 sold for cash?

A. Yes, sir.

Q. And also the $40,000 to Fowler, if it was sold for cash?

A. It was, of course, reported as a sale for cash because it was a part of this original bonus which was given to them, and we considered and treated it on the books as any other cash transaction; there was so much in money, so much in land, and so much in cash; that was the transaction.

Q. Did you deduct the $40,000 of stock from the whole bonus?

A. No, sir; it was in addition to the $40,000 to which I testified.

Q. So that there was a bonus of $120,000 to the Fowlers?

A. Yes; it was $40,000 added to the amount I gave you yesterday as land and cash.

Q. The stock was a donation, then?

A. Yes, sir.

By Mr. HITE: By a donation you mean a bonus?

A. It was what we call a bonus or inducement; whatever you please to call it.

Q. It was a donation by your company to induce the establishment of the Fowler plant here?

A. Yes, sir.

Q. Now, was there an increase of stock of one hundred dollars in 1881?

A. There is shown here a difference of one hundred dollars for the amount stated for 1881, which increased it to $994,800. There is no statement in respect to that except it was reported in the Boston statement as one hundred dollars of stock issued or
692 I don't know where it went.

Q. Do you know whether it was sold for cash or whether to make up some dividend for stock?

A. I presume it was to even up some amount. I don't know how it came about. There were three shares left in this issue that do not appear to have been issued at the time the increase was made, and one of these shares appears to have been used in one of these years, but I haven't any exact statement of it and we haven't it in our books more than that.

Q. There was another increase from 1883 to 1884 of $200, was there, to bring it up to $995,000?

A. Not in the capital stock. The stock at that time was that even amount, $995,000.

Q. Then in 1884 it was really $995,000?

A. Yes, sir.

Q. Now, there was what was called a reorganization in 1884, was there not?

A. Yes, sir.

Q. At that time the old company was considered to have $995,000 of capital stock?

A. Yes, sir.

Q. The reorganized company started out with a capital stock of $1,990,000, did it not?

A. Yes, sir.

Q. There were two shares of stock in the new company issued for each one of the shares of the old?

A. Yes, sir.

Q. In other words, the capital stock was increased $995,000?

A. Yes.

Mr. Hite objects to the questions of the counsel as being an unfair statement of the facts. There was no increase of capital stock, but the new company started with a capital of $1,990,000. There was no connection between the stock of the old and the new companies.

By Judge MARTIN: There was a reorganization of the old company into a new one, and there were $995,000 of capital stock of the old company, and for each share of that stock two shares of the new company were issued, making the stock at the start $1,990,000. Is that correct?

A. Yes; the company was reorganized with a capital stock of $1,990,000.

Q. Was any additional cash paid in for the additional $995,000 of stock?

A. I don't know whether any of that stock was sold to any new parties or not. I could not answer that without a reference to the record.

693 Q. Will you turn to your Journal D, of date January 1, 1884, and tell us what is stated there?

A. Construction account to capital stock, 19,900 shares, of the par value of $100 each, to be issued to the stockholders of the Kansas City Stock Yards Company in accordance with the vote of the directors of January 5th, namely, two shares in the new company for each share of the old company. It really means the purchase of that property of the former company for that amount.

Q. Now, I say there was no cash paid for the $995,000 of additional stock?

A. No, sir; there was no cash paid.

Q. Now, thereafter your dividends were on a capital stock of $1,990,000?

A. Yes, sir.

Q. There was no change in the stock in 1885 or 1886?

A. No, sir.

Q. The next report is for 1887, when the capital stock was increased to $4,040,000?

A. Yes, sir.

Q. State the items of that increase.

A. $535,000 sold for cash; $1,515,000 in stock dividends.

Q. What was that $1,515,000 made up of?

A. You mean, what was it issued for?

Q. Yes; what was it issued for?

A. It represented partly the amounts which had been expended from time to time for lands and improvements and partly for the increased value of the land during that time.

Q. How much was put in for the increased value of the land?

A. I can give it as a whole; I cannot give it in detail without going through various statements thoroughly. I only have it in the collective form.

Q. Was not $1,058,067 made up by a supposed increase or an estimated increase in the value of the lands and improvements?

A. No, sir; I think not. I think that part of that is from the amounts expended from time to time from the earnings for the improvements and purchases.

Q. Will you look at Journal E, October 31, 1887?

A. Yes, sir; income debtor $1,515,00– to capital stock, $1,515,000.

Q. Now, will you please read the next item?

A. Construction acc't debtor $1,058,067 to income, $1,058,067, to balance income account on account of increased valuation of land.

694 Q. That is the increased value of the land?

A. Yes, sir; $1,058,067.

Q. What is the explanation under that first entry you read?

A. Stock dividend, three-quarters increase of capital stock from $2,150,000 to $5,000,000.

Q. Now, where did the balance of the $456,933 come from?

A. The difference was in the surplus earnings, which were expended at that time in construction or were in the form of surplus.

Q. So that the two items of surplus fund of $456,933 and the

$1,058,067, increased value of the real estate, makes up the item of increase of $1,515,000?

A. Yes, sir.

Q. Then that sum of $1,515,000 and the amount sold for cash, $535,000, would make up the increase of $2,050,000 from 1886 to 1887?

A. Yes, sir.

Q. Was there any increase in 1886?

A. No, sir.

Q. Was there any in 1889?

A. No, sir.

Q. Was there any in 1890?

A. In 1890 there was issued in dividends $404,000 and $900 in cash, making an increase of $404,900.

Q. That is not reported as an increase in 1890, is it, but is carried into the next year's report?

A. It appears on my statement here as the amount of the capital stock on December 31, 1891.

Q. But it was really increased by the amount of $404,000 in 1890?

A. Yes.

Q. Was that a stock dividend, $404,000?

A. Yes, sir.

Q. Then that made up your statement of 1891 of $4,444,900?

A. Yes.

Q. Was there any of that cash?

A. $900.

Q. So that it was even $404,000 of stock dividends for that year?

A. Yes, sir.

Q. Was there any increase from that time to 1892?

A. Yes, sir; there was an increase of $500,000 in 1892.

Q. Is that the amount you gave the Armours?

A. That was the amount which was agreed to be paid to Mr. P. D. Armour for moving his beef plant to Kansas City.

Q. That increased your capital stock $500,000 without adding any cash to your capital?

A. Yes, sir.

Q. What was the next increase of your capital stock?

A. There was sold for cash, in 1893, $55,100, so that the

695 capital appears in 1894 an even $5,000,000.

Q. Now, in 1894 was the capital increased?

A. $265,684.

Q. What was that—a stock dividend?

A. Yes, sir.

Q. Was there another little scrip dividend of $1,416?

A. I think that $1,416 is accounted for in this way: There are naturally fractions of a share, and they are bought or sold according as a person desires to fill out a share or dispose of his fractional part.

Q. So it is virtually a stock dividend of $267,100 in 1894; this scrip dividend was good for that amount of stock?

A. No, sir. I think that the statement which I made is perfectly correct of the amount of stock that was issued. These fractions do not cut any figure in the amount of stock that was issued.

Q. Will you look at the journal entry of March 31, 1894—Journal F? Read the entry there.

A. Subscribers to capital stock, debtor, $1,667,100; to capital-stock account, credit, $1,667,100. 16,666⅔ shares of the capital stock of the company subscribed for under circular of February 8th, offering to stockholders of record February 20th, 1894, the right to subscribe for additional stock at par at the rate of one new share for three shares of old stock, and 4⅓ shares sold to subscribers in fractions at $120.00 per share, 4⅓ shares to enable those entitled to fractions to subscribe for whole shares, thereby avoiding issue of stock scrip; total, 16,661 shares at par, $1,667,100; premium received and credited to premium on stock. $1,668,516 was sold for cash.

Q. Under date of July, 1894, will you read the item about dividend declared July, 1894?

A. Dividend account, 4% on $6,667,100, $266,684.

Q. Now, the entry on page 24, on September 24th, 1895, what appears there?

A. Stock scrip account, debtor, to capital stock, credit, $1,416. See letter from Charles Merriam, at Boston, September 20th, 1894.

Q. So that there was a stock scrip issued for $1,416 to make that up to $268,100?

A. Yes, sir; it was to make the stock an even amount.

Q. Now, when did the stockholders advance this $1,667,100?

By Mr. HITE: You mean what year?

By Judge MARTIN: Yes.

By Mr. HITE: Do you want the date the money was paid
696 in or the date of the transaction?

By Judge MARTIN: When the money was paid in.

A. In answer to the question when these moneys were advanced by the stockholders in payment of the amounts they had subscribed I would state that they were paid during the month of March, 1894—from March 5th to the 2th. They were all paid in March.

Q. How do you ascertain that, Colonel?

A. From a transcript taken from the books which are kept in Boston.

Q. You don't know, then, that that is true except as stated in the letter from Mr. Merriam?

A. That is the only information that we have; that is what is put on the books of this company from the transcript of his books. The paper is signed by Charles Merriam.

Q. Was any cash actually received here by your treasurer or was it only a statement from Mr. Merriam in Boston?

By Mr. HITE: I should like to have that made more clear. Do you mean received by the stock yards company or do you mean received by Colonel Morse's department as distinct from the stock yards company?

A. The amounts as they were needed were drawn from time to

time from Boston. At that time the company was making very large expenditures—much larger than it had the money here to meet—and this stock was sold to provide the necessary funds, and all the money that was necessary was drawn here. It might be that the drafts did not balance that account exactly, because at such times there would be no remittances from here to Boston, but all funds as they were needed were drawn and went into the treasury of the company and were used from there or from here just as it might be required; but as a matter of fact there would be large drafts on the account, because it was used here in the purchase of lands and construction.

Q. The stock books of the company are kept in Boston, are they not?

A. The stock books showing the issue of stock?

Q. Yes; the original books.

A. Yes, sir.

Q. And you simply get transcripts or information from time to time from them as to these transactions in Boston?

A. Yes; we get a transcript once a month.

697 Q. How much money did you draw out of the Boston fund as reported at this point?

Mr. Hite objects to the question as incompetent, irrelevant, and immaterial, it being entirely immaterial whether the money was paid into the office of the company in Boston or in Kansas City.

By Mr. BOYLE: It might not have been paid at all.

By the WITNESS: I know that I paid my part, and I presume the others did also.

By the MASTER: I cannot see the relevancy of the question. It does not seem to me that it makes any difference whether the money was sent to the treasurer here or placed to his credit in Boston.

By Judge MARTIN:

Q. We will drop that matter for the present. The items of $266,684 of stock dividend, $1,416 of scrip dividend, and $1,667,100 of cash capital stock would then make the increase of $1,935,200 that was reported in 1895; is that correct?

A. Yes; that is the way that item was made up.

Q. In 1896 you reported the capital stock as being $7,368,650?

A. Yes, sir.

Q. How was that additional amount of $433,450 issued—for cash or as a dividend?

A. Stock dividend.

Q. At what date was that stock issued?

A. June 25, 1896.

Q. Now, all these stock dividends represent earnings of the company?

A. You mean are represented in the earnings invested, or in what way do you mean—I understand your question; yes, they represent earnings.

Q. They represent the earnings of the company?

A. In this way: They represent the earnings which are expressed in the investment in improvements and in the increased valuation of the land in those items. In a broad sense, I suppose, it would be earnings, all of it.

Q. Now, the increased valuation of the land don't add anything to the dollars and cents of the revenue, does it?

A. Of money earned in cash?

Q. Yes.

A. No, sir.

Q. Whether, therefore, a tract of ground was worth $1,000 or $50,000 wouldn't make any difference in the earnings of the company?

A. In other words, in the earning capacity of the land?

698 Q. Yes.

A. No, sir.

Q. So that you say that these stock dividends represent, in some measure, the increased value of the land?

A. Yes, sir.

Q. But you simply issue it on account of earnings. I will just add, for instance, a certain stockholders' dividend would be $50,000. You have two ways of paying that to him, or may have with his consent and with the consent of the company—that is, by paying him $50,000 in cash or paying him $25,000 in cash and issuing to him $25,000 additional stock. Is that correct?

A. Well, I don't know that I should understand it exactly in that way. That is what it would amount to if a stock dividend was issued. Each stockholder would get his *pro rata* share the same as in the case of a cash dividend. I should like to make a brief statement to sum up the various statements which have been made in detail, so that you may have something by which to check them. I would like the record to show that.

Q. Go on.

A. The stated capital stock on December 1, 1896, was $7,368,650. That was made up of those items, the original amount paid by this company when it was organized, in stock, for the property, and whatever the company had—good will, or whatever you may call it—and everything else—$1,990,000. That was in 1881, at the organization of the present company. It has sold for cash since then $2,759,516. These two items of original stock and stock sold amount to $4,749,516. There has been during that period, since 1884, stock issued to the stockholders of $2,619,134. Of that amount of $2,619,134, $1,437,882 was the amount represented by investment in cash from the net earnings in improvements, land, etc., and $1,181,252 for what I have given as the increased valuation of the land.

By Mr. HITE: I don't understand about this $1,990,000. That was the capital stock issued to the owners of the property, the stockholders of the old company, for the purchase of all the property they had—land, improvements, personal property of every kind, everything which they had, and which represented the property of the stock yards company at the time the new corporation was organized.

By Mr. BOYLE: When you issued two shares for one of the old company?

699 A. Yes; that was issued at that time; the other items I think I have stated.

Q. In the statement of stock sold for cash, you included the $500,000 issued to the Armours?

A. Yes; I include that the same as if it had been sold for cash; I call it a cash sale.

Q. Have you a memorandum of the cash actually paid in by the stockholders out of their own pockets not represented by the earnings or the increased valuation of real estate or donations or anything of that sort?

A. Yes, sir; this $2,759,516, which includes the $500,000 issued to the Armours; that would leave, exclusive of that sum, $2,259,516.

Q. That represents all the actual money that they have paid in?

A. Yes; that would be the cash.

By Mr. HITE: You mean since 1884?

A. Yes, sir.

By Mr. HITE:

Q. Does that include the $1,990,000?

A. No; that is the cash sales.

Q. Now, from 1871 to 1884, how much actual cash had been paid in for stock, how many hundred thousand dollars' worth of stock were actually paid for in cash from the first organization until 1884?

By Mr. HITE: You mean including the original $100,000?

By Judge MARTIN: Yes; including everything.

By Mr. HITE: We object to any inquiry prior to 1884 as immaterial.

By the MASTER: The matter has been fully testified to and only involves a calculation which the master or the attorneys can make, but if the Colonel has a summary before him he may answer the question.

A. From the best information I have on the subject, the amount that was paid in for the stock was $266,450. The larger part of the earnings of the company during those years from 1871 to 1884 were invested in the property and not paid in dividends.

Q. What are the items that make that up?

By Mr. HITE: We object to the inquiry as wholly incompetent, immaterial, and irrelevant.

By the MASTER: I understood he was testifying to a summary of what he had already testified to at length. Objection overruled.

By Mr. BOYLE: You include the $40,000 to the Fowlers at that time?

700 A. Yes; it would be $226,450.

Q. Colonel, what were the cash dividends for 1872?

A. $13,890.

Q. For 1873?

A. There were none.

Q. For 1874?

Counsel for the complainants objects to all questions in relation to the cash dividends of the company as incompetent, irrelevant, and immaterial. Objection overruled.

A. $33,600.
Q. For 1875?
A. $16,800.
Q. For 1876?
A. $9,600.
Q. For 1877?
A. $26,504.
Q. For 1878?
A. $28,00-.
Q. For 1879?
A. $21,150.
Q. In 1880?
A. None.
Q. For 1881?
A. $98,720.
—. For 1882?
A. $99,480.
Q. For 1883?
A. $99,480.
Q. For 1884?

Mr. Hite moves to strike — all of the testimony in relation to the dividends of the company prior to 1884 as incompetent, irrelevant, and immaterial. Motion denied.

Q. For 1884?
A. 119,391.
Q. For 1885?
A. $149,250.
Q. For 1886?
A. $119,400.
Q. For 1887?
A. $150,600.
Q. For 1888?
A. $282,800.
Q. For 1889?
A. $323,200.
Q. For 1890?
A. $323,200.
Q. For 1891?
A. $311,143.
Q. For 1892?
A. $370,592.
Q. For 1893?
A. 296,694.
Q. For 1894?
A. $451,133.50.

Q. For 1895?
A. $554,816.
Q. For 1896?
A. $429,160.50. Total, $4,328,604.
701 Q. You do not include anything for 1897?
A. No, sir; this statement is to December 31, 1896.
Q. There was a dividend in February, 1897, was there not?
A. Yes, sir; a dividend of 1½%.
Q. Do you know how much it amounted to; it was 1½% on $7,368,650?
A. Yes, sir; I think that would be the exact way to figure it, but in giving these figures I prefer to give them exactly as they are. There was paid on the first of February, 1897, $110,557.50.
Q. When these stock dividends are made the stock is issued to the stockholders at par?
A. Yes, sir.
Q. They do not pay any premium?
A. No, sir.
Q. When the stock is sold in the market it brings a premium, does it not?
A. In some cases it does; generally it has been sold at par, but there were a few sales at a premium.
Q. The quotations on the stock market are given at from $1.15, $1.18 to $1.20, are they not, for the stock?
A. Yes; that is about it; there has been very little that has been sold on the market; it has been sold for what it would bring whenever it has been sold.
Q. From fifteen to eighteen per cent. premium?
A. Yes; I don't know that it is just now.
Q. It has been above par for a great many years, has it not?
A. Yes, sir.
Q. About how many years?
A. For a great many years there were no quotations whatever because it was an unknown stock; it was not known on the market; but I should say that for the last fifteen years it has commanded a premium on the market.
Q. Ranging about how high?
A. I think it has been up as high as $1.40 and has run down as low as $1.10; there has never been very much of it on the market. If there had ever been any large block of the stock on the market it would probably have sold for very little above par; the occasional sales of a few shares are all that have been bid for.
Q. How much railroad track is there in these yards; do you know?
A. That has been testified to exactly in a statement filed here and I could not give it from memory. I think it is in Mr. Child's evidence.
Q. Who laid that track, Colonel?
702 A. I think that all that is on *on* the ground of the company now has been laid by the company and its employés, but first and last, there has been a great deal of it laid by railroad

companies that has been taken up and replaced. The exact condition of what is now down I could not say.

Q. When the tracks were originally constructed who did the work or paid for the work?

A. I think probably that the tracks that were put down in the first place were all laid by the railroad companies; the stock yards company had nothing to do with them; they had simply given the railroad companies permission to lay the tracks on the ground.

Q. Renewals, repairs, and betterments have been placed here by whom?

A. There is nothing left of the original system of tracks. All the tracks now there belong to the company and have been built there by it from time to time.

Q. Did the stock yards company pay the cost of all the betterments?

A. Yes, sir; everything reported in the way of tracks were paid for by the company.

Q. That has gone into operating expenses from year to year?

A. You mean the cost of maintenance?

Q. Yes.

A. Yes, sir.

Q. These works, I suppose, have been made gradually; not all at once?

A. There was quite a general change made, I think, about 1887, when the company first began to lay its own tracks. I think it was about that year, and since that time everything that has been done has been done by the company on its own account.

Q. Do the railroad companies have particular tracks which they use to the exclusion of other companies?

A. They did formerly, but by an arrangement between the stock yards company and all the railroad companies it was agreed on the part *on the part* of the railroad companies that they would allow the stock yards company to designate which track they should use at any particular time, and, so far as possible, certain railroad companies use one track or tracks which are more convenient for them, but they allow the stock yards company to assign to them such tracks as are most convenient to facilitate the business.

703 Q. Any railroad company that comes into Kansas City may run freely into the yards, may it, for the purpose of unloading and loading and transferring stock?

A. Yes, sir; there is provision made for each railroad so that it can use the tracks to get into the stock yards.

Q. Do any of the railroad companies load and unload stock at their own chutes and on their own grounds?

A. Some of them load and unload on ground which is their property and which is leased by the stock yards company. The chutes are all the property of the stock yards company.

Q. But the railroad tracks belong to the railroad companies themselves, do they not?

A. In some cases. I think in all cases where they are on their

own rights of way that they belong to the company that owns the right of way.

Q. Calling your attention to lands in Missouri occupied by the Kansas City Stock Yards Company and those that it formerly owned, I call attention to the tract of ground said to contain 49.01 acres. I will ask you if the stock yards company ever owned that land.

A. Yes, sir.

Q. When did it purchase that land?

A. It was bought in 1876.

Q. How much was paid for it?

A. $46,593.60.

Q. From whom was it purchased?

A. From the West Kansas City Land Co.

Q. Does your company still own the land?

A. No, sir; not the entire tract.

Q. The tract was either the whole or a part of the west half of the northwest quarter of 7, 49, 33, was it not?

A. Yes, sir; section 7, T. 49, range 33.

Q. Where is it located?

A. The general description of the land would be bounded on the north by 17th street, on the east by lands of the Kansas City, Fort Scott & Memphis Railway Company, I think, and the southern boundary was somewhat irregular. It ran for a certain distance south of this right of way of the Kansas City, Fort Scott & Gulf Railway Company. The general southern boundary was the center of Turkey creek, and on the west it was bounded by the State line. At that time it was a solid body of land without anything cut out of it at all.

Q. Does your company still own it?

A. No, sir; it owns parts of it now.

Q. Where are those parts still owned by the company?

A. I think I can make the matter clearer if I explain in

704 regard to that tract of land, if you will allow me to do so. That tract of land was purchased by the company in 1876, with the view of the company at that time of building its stock yards, its additional stock yards, on that land, but it had not improved it, except to have one railroad, I think, on it up to the time that I came here in 1879. Just then the city of Kansas City, Missouri, was proposing to open some streets through the land, and there was quite a contest over that to, if possible, prevent the land from being cut up so as to prevent its use as a solid body of land; but the city started condemnation proceedings. No objection was made, and certain streets were opened. When the company reorganized in 1884 and the new company bought the property of the old, this piece of property was then regarded as being out of the question for stock-yards purposes, being cut up as it was by streets, and with the view of moving the yards to this new property which was then being purchased, this land was not included in the purchase from the old by the new company. It was left out entirely, and, as I stated yesterday in regard to several little tracts over

about the north yards, the property went into the hands of trustees, who held them for part of the stockholders of the stock yards company and for other parties who came in later and took an interest in them. Since that time and since the conclusion of the company that it would have to remain here on this ground there have been parts of that land purchased from time to time, and are now the property of the stock yards company. They include portions of the lands that lie west of Genesee St. and north of 19th street.

Q. How much of it is included in the present stock-yards property?

A. A little over ten acres.

Q. What does the record show?

A. It shows that the land is *t*outh of 17th street and north of 19th street and west of Genesee street.

Q. And east of old Bell street?

A. West of Genesee. That includes all west of Bell street.

Q. It extends further west than Bell street?

A. It extends to the State line—that is, the western boundary of the original tract.

Q. There are about ten acres in the tract?

A. There are 10.275 acres in that tract.

705 Q. What was done with the rest of the land?

A. The land remains unsold still; it is generally occupied by warehouses, and one thing and another.

Q. It still belongs to the stock yards company?

A. No, sir; I thought you asked what was done after this sale of ten acres to the stock yards company; that is the way I understood your question.

Q. I thought the stock yards company bought the whole 49 acres?

A. That is what I said; the stock yards company did buy the whole 49 acres, but at the time of the reorganization of the company that 49 acres, together with some small tracts on the north side that were referred to yesterday, were not included in the sale to the new company, but since that time ten acres have been purchased by the company; ten acres of the 49 have been repurchased by the company which was organized in 1884. Another company was organized, but not incorporated, known as the State Line Improvement Company, and some of the parties interested in the stock yards company and some not so interested took interests in the property.

Q. Didn't the new company in 1884 take all of the property of the old company?

A. No, sir; it did not take this tract of land that I have referred to.

Q. Wasn't there a general deed of all the property of the old company made to the new company?

A. This was made a special matter; this deed for the 49 and a half acre tract was made to me, as trustee, by the old company, on December 21, 1883, which was prior to the organization of the new company, and I held the land as trustee.

Q. Then, what did you do with all the land that was not included in the ten acres that you say was purchased by the new company?

A. That ten acres was a comparatively recent transaction. It was some eight or ten years after this sale.

Q. What was done with the other 39 and a half acres?

A. That remains in the possession of what is called the State Line Improvement Company, held by trustees for the stockholders of the new company. The only reason why the company was not incorporated was that the attorneys of the parties advised that under the Missouri law they could not incorporate a land company
706 for the purchase and sale of lands, so that instead of incorporating as a corporation it was made into a company without any corporation, and the land is held by trustees.

Q. How much did the company get for this 39.2 acres of this tract south of 17th street that was sold or disposed of in some way?

A. That is, the old company?

Q. Yes.

Counsel for the complainants object to the question as incompetent, irrelevant, and immaterial. Objection overruled.

A. The consideration was nomina-; one dollar.

Q. That is held in the name of the State Line Improvement Company, but is in the hands of trustees?

A. Yes, sir; it is and has always been treated entirely as a company by itself; the stock is represented the same as in an incorporated company and is bought and sold.

Q. But — it not a real corporation?

A. No, sir; not a corporation.

Q. And you say that besides that there was some land up in the vicinity of the north yards, on the peninsula as we have called it, that is also held by the State Line Improvement Company in the same way?

A. Yes; I think that was in the testimony yesterday; it included an irregular piece of land, a small lot called D, I believe.

Q. Where is that lot D?

A. It is very nearly opposite the Armour packing-house on Central avenue.

Q. That was included in the deed to Adams and others?

A. Yes, sir.

Q. Who are the partners in the State Line Improvement Company or the parties in interest in it?

Counsel for complainants object to the question as incompetent, irrelevant, and immaterial. Objection sustained.

Q. The transfer was made to these gentlemen for a nominal consideration?

A. Yes, sir.

Q. Is not this tract of land of 49.5 acres, and not included in the ten acres taken in by the stock yards company—is it not still in-

cluded in the total value of the lands in your estimate on which the capital stock of the company is based?

A. No, sir; not in any way, shape, or form.

Q. Colonel Morse, did your company purchase in 1876 lots 16, 20, 21, 24, and 25, in block 4, in Skiles' & Western's addition?

A. Yes.

707 Q. From whom did you purchase it?

A. The title came to the stock yards company through Nathaniel Thayer, Jr.

Q. Do you know from whom he bought it?

A. H. H. Skiles.

Q. How much was paid for it by your company?

A. There were a number of other lots included in the same purchase.

Q. Do you know how much was the price of these lots?

A. Not of those individual lots.

Q. I will add lots 18, 19, 22, 23, 26, 27, 29, and 30, in the same block, and 16 and 30, in block 5.

—. The consideration for those was $4,160.50.

Q. For 15 lots?

A. Yes, sir.

Q. Those are included in the present stock yards?

A. Yes, sir.

Q. Now, I believe the next tract is 12. Did your company purchase, in 1877, lots 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29, in block 5, in Skiles & Wes*g*ern's addition, and lots 17, 18, 19, and 20, in block 9, in the same addition?

A. Yes, sir.

Q. How much did you pay for them?

A. $3,612.50.

Q. Those are included in the stock yards?

A. Yes, sir.

Q. Tract 14, I believe, is the next. Did your company purchase, in 1878, lots 1, 2, 3, 4, 5, and 6, in block 4, in Depot addition, and lots 1, 2, 3, 4, 5, 6, and 7, in block 5, in the same addition, and lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14, in block 12, in Depot addition, and lots 8, 9, 10, 11, and 12, in block 5, in Depot addition?

A. Yes, sir; my list agrees with those, except lot 8, in block 12. Those are all the property of the Kansas City Stock Yards Company.

Q. What did you pay for them?

A. $23,578.90.

Q. They are in the stock yards, are they?

A. Yes, sir.

Q. Did your company purchase, in 1880 and 1881, these lots: lot 17, in block 4, in Skiles & Western addition; lot 28, in block 4, and lots 21, 22, 23, 24, 25, and 26, in block 9, in Skiles & Western's addition, and lots 27, 28, 29, 30, 31, and 32, in block 9, in the same addition?

A. Yes, sir; those were all purchased by the stock yards company.

Q. How much did it pay for them?

A. $12,100.
Q. They are in the stock yards now?
A. Yes, sir.
Q. Did your company own what is known as the Nofsinger
708 tract, being 2.336 acres, in 1879 and 1880?
A. The company owned it at that time; yes.
Q. How much did it pay for it?
A. The consideration was, I think, the amount due to the Kansas City Stock Yards Company from the First national bank at the time it suspended payment, and we took the lots in settlement of our account; it stands at $12,688.88.
Q. Does the company still own that?
A. No, sir.
Q. What did the company do with it.
A. It was sold to Jacob Dold & Company.
Q. For how much?
A. Just the amount of the consideration, $12,688.88.
Q. What was the date of that sale to Dold?
A. April 27, 1882.
Q. Was that really a sale or a gift?
A. That was actual cash; the money was received for it.
Q. It was cash?
A. Yes, sir; I said, in the first place, from my recollection, I thought it was a gift, but upon looking the matter up I find it was an actual cash sale.
Q. Dold established a packing-house here, didn't he?
A. Yes, sir.
Q. Where did he come from to Kansas City?
A. Buffalo, N. Y.
Q. Did the stock yards company induce him to come?
A. No, sir; he came on his own motion.
Q. Didn't you give him any stock, money, or land, or anything to induce him to come?
A. No, sir.
Q. Then he is one man who didn't have to be paid for coming to Kansas City?
A. That is the record.
Q. Did your company purchase lots 7, 8, and 15, in block 4, Skiles & Western's addition?
A. Yes, sir.
Q. When?
A. In February, 1886.
Q. How much was paid for the lots?
A. $5,000.
Q. Did your company buy lot 4, block 9, same addition?
A. Yes.
Q. How much did you pay for it?
A. $1,000.
Q. Did your company buy lot 9, in block 9, same addition?
A. Yes.
Q. When?

A. February, 1886.
Q. How much was paid for it?
A. $1,500.
Q. Did your company buy lot 4, in block 5, same addition?
A. Yes, sir.
Q. When?
A. February, 1886.
709 Q. How much was paid for it?
A. $2,000.
Q. Did your company buy lot 1, in block 9, same addition?
A. Yes, sir.
Q. How much was paid for it?
A. There was another lot included in that purchase.
Q. Lots 1 and 2?
A. Yes, sir.
Q. How much?
A. $4,000.
Q. Date?
A. February, 1886.
Q. Did you buy lot 5, in block 9?
A. Yes, sir.
Q. How much was paid for it?
A. $1,575; February 27, 1886.
Q. Did you buy lot 1, in block 5?
A. Yes, sir.
Q. Same date?
A. Same date; February 27, 1886.
Q. How much did you pay?
A. $8,000.
Q. Did you buy lots 14 and 15 and 16, in block 9?
A. Yes, sir.
Q. When, and how much did you pay for them?
A. In March, 1886; consideration, $11,000.
Q. Did you buy lot 6, in block 9, in Skiles & Western's addition?
A. Yes.
Q. How much, and when?
A. March 4, 1886; $1,500.
Q. Did you buy lots 11, 12, 14, and 15, in block 5, same addition?
A. Yes, sir.
Q. When, and how much did you pay?
A. March 6, 1886; $15,000.
Q. Did you buy lot 13, in block 9?
A. Yes, sir.
Q. When?
A. March 17, 1886.
Q. For how much?
A. $2,850.
Q. Did you buy lot 10, block 9, same addition?
A. Yes, sir.
Q. When?
A. March 20, 1886.

Q. For how much?
A. $2,500.
Q. Did you buy lot 3, in block 9; if so, when, and how much did you pay?
A. Yes, sir; March 20, 1886; consideration, $3,000.
Q. Did you buy lot 13, in block 5?
A. Yes, sir.
Q. When?
A. March 8, 1886; consideration, $8,000.
Q. Did you buy lots 2, 5, and 6, in block 5, Skiles & Western's addition?
A. Yes, sir; March 18, 1886; consideration, $11,000.
Q. Did you buy lot 7, in block 9?
A. Yes, sir; March 12, 1886; consideration, $2,800.
710 Q. At the same time did you buy lot 3, in block 5?
A. Yes, sir.
Q. How much did you pay for it?
A. The consideration was $1,650; Feb. 9.
Q. Making a total of $4,450 for the two tracts in the different blocks?
A. Yes, sir.
Q. Did you buy lots 1, 2, 5, 6, 9, 10, 13, and 14, in block 4, Skiles & Western's addition?
A. Yes, sir; March, 1886; consideration, $25,000.
Q. Did you buy lots 11 and 12, in block 4, same addition?
A. Yes, sir; April 2, 1886; consideration, $6,000.
Q. Did you buy lot 11, block 8, same addition?
A. Yes, sir; April, 1886; consideration, $2,000.
Q. Did you buy lot 8, block 9, same addition?
A. Yes, sir; April, 1886; consideration, $4,200.
Q. Did you buy lots 7, 8, 9, 10, and 11, in block 5, same addition, and lots 7, 8, 9, and 10, in block 5?
A. Yes, sir; April, 1886; consideration, $11,990.
Q. Was anything added to that in any way?
A. No, sir.
Q. You paid $11,990?
A. The consideration was $12,000, but there was rent or something of that kind which was taken out of the consideration, leaving the amount paid by the company at $11,990.
Q. Lot 12, in block 9?
A. Yes, sir; March, 1886; consideration, $3,100.
Q. Lots 3 and 4, block 4, Skiles & Western's addition?
A. Yes, sir; September 8, 1886; consideration, $7,081.23.
Q. Is all of the property which we have so far described all in the old part of the yards in Kansas City, Missouri, west of Bell street?
A. Yes, sir; it is all west of Bell street.

The hour of 12.30 noon having arrived, the master arose and took a recess until 1.30.

Afternoon session—1.30 p. m.

Cross-examination of Colonel MORSE resumed by Judge MARTIN:

Q. I believe I neglected to ask you how much was paid by your company to this State Line Improvement Company or the
711 association that goes by that name. Will you please state how much the stock yards company paid for the 10.275 acres tract?

A. The first transaction is 5.519 acres, $174,237.85.

Q. When was that?

A. In December, 1892. One piece, 1.75 acres, $55,248.34, 12th day of February, 1894; .617 acres, same date, $12,340; 2.389 acres, same date, $75,421.90; that is a total of 10.275 acres, and the total consideration is $317,248.09.

Q. That was actually paid by your company to the State Line Improvement?

A. Yes, sir; it was paid in cash.

Q. By whom was the money paid?

A. By the Kansas City Stock Yards Company to the State Line Improvement Company; that is the way it shows on the account, at any rate.

Q. Are you a member of the company?

Mr. Hite objects to the question as incompetent, irrelevant, and immaterial. Objection sustained for the present.

Q. I am not sure that you gave me the date of the transfer of this 49 acres of land to the State Line Improvement Company.

A. Yes, sir; it was December 21, 1883.

Q. Wasn't that conveyance made to you?

A. Yes, sir.

Q. Individually or as trustee?

A. As trustee.

Q. So named in the deed?

A. No, sir; I think under the Missouri law they never have the trustee named in the deed. There is a decla-tion of trust made by the trustee which covers the same purpose as naming him in the deed. I made a declaration of trust.

Q. But not in the deed?

A. No, sir.

Q. Then, Colonel Morse, for the purpose of holding this title, you are the State Line Improvement Company?

A. No, sir; not at this time.

Q. But you were at the time you held this title for the State Line Improvement Company?

A. I could not tell from memory just how that was when the transfer was made.

Q. Where is block 3 in Skiles & Western's addition, east or west of Bell street?

A. It is east of Bell street, between 16th and 17th street.

Q. You may state if your company purchased in May, 1893, lots

1, 2, 3, and 4, in block 3, Skiles & Western's addition; if so,
712 you may state the price of the lots or of each one of them.

A. Lot 1, block 3, Skiles & Western's addition, bought May 31, 1893; consideration, $5,006.15; No. 2, same block, same consideration; No. 3, same block, same date, $5,006.16; No. 4, same block, same date, $5,006.15.

Q. Did you purchase lot 5, block 3, about June 14, 1893?

A. Yes; consideration, $3,983.30.

Q. Did you purchase about May 31, 1893, lot 6, block 3; if so, what did you pay for it?

A. $4,028.08.

Q. Did you purchase, about December 7, 1893, lot 7, block 3; if so, at what price?

A. It was purchased at that time for $4,000.

Q. Did you purchase, about February 12, 1894, lots 8, 9, 10, 11, 12, 13, 14, and 15, block 3; and, if so, at what price?

A. Total consideration, $37,187.50.

Q. Did you pay anything in addition to that to anybody?

A. Yes; there was a lease on the property and there was six or seven hundred dollars paid in addition to that to get possession of the property.

Q. Should that be in addition or should it be subtracted?

A. That was in addition to the cost of the property.

Q. Did you purchase, about April 1, 1887, lots 1, 6, 17, 18, 19, 20, 21, 22, and 23, in block 3; if so, what did you pay for them?

A. Yes, sir; the purchase price was $30,000.

Q. Who was the grantor of that property?

A. Charles F. Adams.

Q. Was that any part of the lands that were included in that 49 acres?

A. No, sir; that was private property that he bought, I think, of somebosy else in 1872 or '73.

Q. Did you purchase, on March 3, 1894, lots 24, 25, 26, and 27, in block 3; if so, when, and how much did you pay for them?

A. Yes, sir; they were purchased May, 1894, and the consideration was $25,000. There is an item of expense connected with the property of $118.43.

Q. That had nothing to do with its purchase price?

A. No, sir; but I mention it as being an item in the cost of the land.

Q. Did you purchase, about the same time, lots 24, 25, 26, and 27, block 6; if so, at what price?

A. Yes; March 31, 1895; the consideration was $25,000.

713 Q. Did you purchase about February 15th, 1894, lot 28, in block 3, in Skiles & Western's addition?

A. Yes, sir; price, $20,000.

Q. Anything in addition in any way?

A. Yes; $31.50.

Q. For what?

A. It is put down here as stone sidewalk.

Q. Had nothing to do with the purchase price of the land?

A. It was paid by the company; the former owner claimed that he owned this improvement.

Q. That purchase was made from Major Drought, was it not?

A. Yes, sir.

Q. Did you purchase about January 22, 1894, lot 29, in block 3; if so, at what price?

A. Yes, sir; $22,356.

Q. Is that all that you paid?

A. There is an item here which says, Mechanics' bank, $120. I don't know just the explanation of it; it was some expense in connection with the purchase of the land.

Q. Do you know whether it should be added?

A. Yes; it should be added.

Q. You don't know what it is?

A. No; I presume it was an expense that was in some way attached to the property and made part of the contract to pay for it.

Q. Did you purchase at the same time lot 30, in block 3; if so, at what price?

A. January 24, 1895; purchase price, $22,356, with some other items of expense added to the property.

Q. Does the entry explain what it was?

A. No, sir.

Q. Does it show the Mechanics' bank?

A. Yes, sir; Mr. Richardson thinks it was some interest that was due and which was paid by the company.

Q. It should not be added to the purchase price?

A. Yes; it was in addition to the cost of the property.

Q. Did you purchase about December 11, 1893, lot one, in block 6, in Skiles & Western's addition; if so, at what price?

A. Yes, sir; the price was $12,004.28, with an item of $35.00 added.

Q. Do you know whether that should be added or subtracted?

A. It should be added.

Q. If it was rent collected by you it should be deducted?

A. Yes; if it was rent.

Q. Did you purchase about May 16, 1893, lots 2, 3, 5, 6, and 7, in block 6, Skiles & Western's addition; if so, at what price, either by single lots or in the aggregate?

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A. Lot 2, $4,687.90; lot 3, $4,687.89; lot 5, $4,687.89; lot 6, $4,687.89; lot 7, $4,687.89.

Q. Did you purchase about February 28, 1894, lot 4, in block 6; if so, what did you pay for it?

A. We purchased it May 2d, 1894, at a cost of $6,250, with an expense item of $5.35 added.

Q. I will ask you if you purchased about May 22, 1894, lot 8, block 6; and, if so, at what price?

A. June 8, 1893; consideration, $4,314.20.

Q. Did you purchase about June 13, 1893, lot 9, in block 6; if so, at what price?

A. Yes, sir; consideration, $4,803.26, with two additional items of $40 each, making $80.

Q. Should those items be added or subtracted?

A. Those were items of interest owing by the party who sold the property, which did not accrue until after the purchase was made, and that amount was paid to the owner of the deed of trust by the company. It should be added to the cost.

Q. Did you purchase about May 15, 1893, lot 10, in block 6, in Skiles & Western's addition?

A. Yes, sir; the price was $4,134 68. There is charged to the land $1,000; $800 is put in here as the loss on a building which stood on the land, and it went into the cost of the property.

Q. It had nothing to do with the purchase price of the land?

A. No, sir; the other two hundred dollars is in the same account; the total amount should be one thousand dollars.

Q. What is the two hundred dollars for?

A. For loss on the building.

Q. Did you purchase in June, 1894, lot 11, in block 6; if so, at what price?

A. June 7, 1894, lot 11, block 6; consideration, $6,632.98.

Q. Is that all?

A. No, sir; there is an item of $139.33; it was for abstra-tors, lawyers, and fees and for commissions to C. J. Hubbard.

Q. Is Hubbard a real-estate man?

A. Yes, sir; not a regular agent, but he handles real estate quite largely.

Q. Those charges have nothing to do with the purchase price of the land?

A. No, sir; the purchase price was $7,000, and there was deducted $367.02, leaving it at the figure I have named, which stands as the cost of the property.

By Mr. DANA: The deductions are for rents collected after the purchase?

A. I presume so.

715 Q. Did your company purchase about July 8, 1893, lots 12, 13, and 23, in block 6; if so, at what price?

A. Yes, sir; the consideration was $11,801.02 for each lot.

Q. Did you purchase at about the same time lots 19 and the north 18 feet of lot 18, in block 10; if so, how much did you pay?

A. Lot 19, $11,801.02; lot 18, $8,848.92.

Q. Is that for the whole lot?

A. Yes; it seems to be in two conveyances, one of 7 feet, the other of 18 feet—a 25-foot lot.

Q. Was that the price of the whole lot?

A. Yes, sir.

Q. Colonel Morse, these extensions of the yards commencing in 1893 were over a part of the city that was already improved and had many residences and business-houses on it, were they not?

A. Yes, sir.

Q. The houses were of no value to you for stock-yards purposes?

A. No.

Q. They had to be removed in order to give room for the stock yards?

A. Yes, sir.

Q. You bought the lots at prices which would compensate the owners for the buildings?

A. Yes, sir; paid for what they had.

Q. You also bought them at prices which would compensate the owners for their business if they had business-houses?

Mr. Hite objects to the question as immaterial. Objection sustained.

Q. You did not nominally buy the business?

A. No, sir.

Q. But you had to make a price that would satisfy the businessmen for the loss of the business as well as of the property?

Objection as before.

By the MASTER: I think his former answer covers that.

Q. Have you any account of what you sold those buildings for?

A. It can be ascertained, but each item will be picked out.

Q. I shall be glad to have that afterwards.

Q. But as to these lots on which you figured the building at a thousand dollars, the price of the building was included in the purchase price of the land?

A. Yes, sir.

Q. Then how would that be any proper charge? How can you say there would be any loss on the building itself, when its value and everything connected with it is included in the cost of the land?

716 A. I don't know why in that particular case it was put in in that way. There must have been some peculiar condition attached to that lot. Mr. Richardson tells me that in order to have the account what the buildings were there was a valuation placed on the buildings after the property was purchased, and then when the buildings were afterwards sold this valuation of the buildings was credited to the amount for which the buildings were sold and the loss on the building was charged up to the cost of the land.

Q. Well, usually you would admit that would be no proper item of charge in the consideration price?

A. No; not in an ordinary transaction; but this was for the purpose of making it clear on the books.

Q. Did you purchase about July 3, 1894, lots 14 and 15, in Skiles & Western's addition; if so, at what price?

A. Yes, sir; $6,818 for each one.

Q. Did you purchase on January 14, 1894, lots 16 and 17, in block 6; if so, at what price?

A. Yes, sir; $27,196.73 for No. 16, in block 6, with several items of expense attached amounting to $2.328.25.

Q. Now, do you know how much that lot 16 stands the company at?

A. $29,524.98.

Q. How much did you pay for lot 17?

A. The purchase price was $27,198.76; that was the amount paid.

Q. Any additional items to be added or subtracted?

A. No, sir.

Q. Don't your deed recite a consideration of $10,000 in the aggregate for both lots?

A. I don't know what the deed recites. That is the amount that was paid. Of course, I am giving you just what the books show. I could not tell what the deed- show without referring to them in every case.

Q. Did you purchase in May, 1894, lots 18 and 19, in block 6; if so, at what price?

A. Yes; the price of lot 18 *or* $1,000 and of lot 19 $48,000.50.

Q. Now, is not the whole cost of lot 18 included in another item that we have passed over?

A. It is pretty difficult to tell that without actually comparing it with the conveyances. That is just the way it appears here.

Q. The two lots would be how much, then?

A. $49,008.50.

717 Q. Did you purchase lots 20 and 21, in block 6, in June, 1894; if so, at what price?

A. The consideration for the two lots was $50,000. There are some little expenses connected with the transaction, which are included in the cost of the land and should be added. The total cost is $50,353.75.

Q. Did you purchase in June, 1893, lot 28, in block 6; if so, at what price?

A. Yes, sir; the cost price was $5,255.18. There is an item of additional expense of $95.18, and a deduction of $90 for rents collected, making a net addition of $5.18, making the total $5,255.18.

Q. Did you at the same time purchase lot 7, in block 10, Skiles & Western's addition; if so, at what price?

A. Yes, sir; June, 1893; the cost was $3,755.18.

Q. Did you purchase about April 27, 1895, lots 29 and 30, in block 6, same addition?

A. Yes, sir; $32,856.40.

Q. Did you purchase about May 24, 1894, lots 1, 5, and 6, in block 10, same addition; if so, at what price?

A. Yes, sir; lot 1, the cos*in*deration was $8,999.99; lot 5, $9,000; lot 6, $9,000.01, making a total of $27,000.

Q. Did you purchase about January 10, 1894, lot 2, in block ten, same addition?

A. Yes, sir; for $5,000.

Q. Did you purchase in February, 1894, lot 3, in block 10; if so, for how much?

A. Yes, sir; it cost $4,783.43, with a fee of $88.76 to Ashley Gilbert, which should be added.

Q. Did you purchase about January 14, 1894, lot 4, in block 10, same addition?

A. Yes, sir; consideration, $5,000.

Q. Did you purchase about June, 1893, lot 7, in block 10; and, if so, at what price?

A. That one has already been given.

Q. Did you purchase about May 22, 1893, lot 8, in block 10; if so, at what price?

A. Cost $4,448.41; it was purchased at that time.

Q. Did you purchase about January 20, 1894, lot 9, in block 10, same addition; and, if so, at what price?

A. Yes, sir; $5,000.

Q. Did you purchase in May and June, 1894, lot 10, in block 10?

A. Yes.

Q. At what price?

A. $5,625.

Q. Did you purchase about April 4, 1894, lot 11, in block 10; if so, at what price?

A. Yes, sir; $5,625.

718 Q. Did you purchase about May 16, 1893, lots 12, 13, and 20, in block 10, in the same addition; if so, at what price?

A. Lot 12, $3,329.76; lot 13, $3,329.76; lot 20, $3,329.75.

Q. Did you purchase about May 16, 1893, lot 23, in block ten; if so, at what price?

A. Yes, sir; $2,729.75.

Q. Did you purchase about May 19, 1874, lot 14, in block ten; if so, at what price?

A. Yes, sir; $5,000.

Q. Did you purchase about June 6, 1893, lot 15, in block 10; if so, at what price?

A. Yes, sir; $4,030.08.

Q. Did you purchase about June 15, 1893, lot 16, in block 10; if so, at what price?

A. Yes, sir; $5,006.69.

Q. Did you purchase about May 22, 1893, lots 17 and 18, in block 10; if so, at what price?

A. 18, in block 10, has been given. For lot 17, $5,180.64, to which was added, Ashley Gilbert, $50.05 and fee of some kind, one dollar, and another item of $21.84.

Q. Did you purchase about January 9, 1894, lot 21, in block 10; if so, at what price?

A. Yes, sir; $5,000.

Q. Did you purchase about January 27, 1894, lot 22, in block ten?

A. Yes; for $5,000.

Q. Did you purchase about January 6, 1894, lot 23, in block 10?

—. Yes, sir; $4,980.80.

Q. Did you purchase about May 16, 1893, lots 24, 25, and 26, in block ten; if so, at what price?

A. Yes, sir; lot 24, $3,757.97; lot 25, $3,757.97; lot 26, $3,757.98.

Q. Did you purchase about January 4, 1894, lot 27, in block ten; if so, at what price?

A. Yes, sir; $5,615.40.

Q. Did you purchase about January 15, 1894, lots 29 and 30, in block 10; if so, at what prices?

A. Yes, sir; lot 29, $4,983.85; lot 30, $5,000.

Q. Did you purchase about June 10, 1893, lot 31 and the south 8½ feet of lot 32, in block ten; if so, at what price?

A. Lot 31, $5,022.15; lot 32 is put in here as one complete transaction, the consideration being $4,935.51.

Q. Did you purchase about February 10, 1894, lot 1, B. & D. addition, subdivision of lots 1 and 2 of block 11, in Depot addition; if so, at what price?

719

A. Yes, sir; $9,000.

Q. Did you purchase in May, 1893, lot 2, in B. & D. subdivision of lots 1 and 2, in block 11, Depot addition; if so, at what price?

A. Yes, sir; $4,006.64.

Q. Did you, about June 1, 1893, purchase lots 3, 4, and 5, in B. & D. subdivision of lots 1 and 2, block 11, Depot addition; if so, at what price?

A. Yes, sir; those three lots were purchased—lot 3, $3,353.56; lot 4, $3,353.56; lot 5, $3,353.55.

Q. Did you purchase, about January 12, 1894, lot 3, in block 11, Depot addition; if so, at what price?

A. Yes, sir; $8,000.

Q. Did you purchase, about June 15, 1893, the north 26 feet and 8 inches of lot 4, in block 11? Did you purchase the whole lot?

A. We purchased the whole lot in two parts, 26⅔ and 13¼, at a total cost of $7,931.49.

Q. Did you purchase the whole lot?

A. Yes, sir; 40 feet.

Q. Did you purchase in January, 1894, the north 13⅓ feet of lot 5, in block 11, in Depot addition?

A. Yes, sir; and the balance of it was purchased also. The whole cost was $10,666.67.

Q. Did you purchase at the same time the undivided half of lot 17, in block 6, Depot addition; if so, at what price?

A. Yes, sir; the consideration was $3,000.

Q. Did you purchase, about April 26, 1893, lot 6, in block 11, Depot addition?

A. Yes, sir; $6,611.52, with an expense item of $90.

Q. Did you purchase, about April 11th, 1894, lot 7, in block 11, in the same addition; if so, at what price?

A. Yes, sir; nine thousand dollars.

Q. Did you purchase on May 22, 1893, lots 8 and 9, in block 11, same addition?

A. Yes, sir; lot 8, $6,924.85; lot 9, $6,924.85.

Q. Did you purchase, about May 22, 1893, lot 10, block 11, in Depot addition; if so, at what price?

A. Yes, sir; $6,961.67.

Q. Did you purchase, about April 29, 1895, lot 11, block 11, same addition; if so, at what price?

A. Yes, sir; $25,291.80.

Q. Do you know to what purpose that lot was devoted?

A. To no purpose; it was vacant.

Q. What is its location?

A. It is near 14th street, fronting west on —

720 *Q. What is its location?*

A. It is near 14th street, fronting west on Bell street.

Q. How did you come to pay such an enormous price for it?

Mr. Hite objects to the question as improper. Objection over ruled.

A. I think I have already testified that there were some cases in which we were held up, as it is called. This was one of them.

Q. Mr. Shepherd held you up, did he?

A. Yes, sir.

Q. Is he connected with the company in any way?

A. No, sir.

Q. Did you, about June 6, 1893, purchase lot 12, in block 11, Depot addition; if so, what did you pay for it?

A. Yes, sir; $7,153.53.

Q. Did you purchase, about May 24, 1893, lots 1 and 2, in block 6, in Depot addition; if so, at what prices?

A. Lot 1, $4,289.85; lot 2, $2,936.84.

Q. Did you purchase, about June 26, 1893, lot 1 and 19 feet off the north side of lot 2, in block 6, in Depot addition, or did you purchase two tracts embracing this lot 2, one of 19 feet and the other of 21 feet, in block 6?

A. The last one I gave was lot 2, in block 6.

Q. You bought those from different parties, the Gallaghers and others?

A. 1 and 2 were both bought from Mary Gallagher.

Q. Did you purchase, about August 9th, 1894, lot 4, in block 6, in Depot addition?

A. Yes, sir; it cost $7,351.35. That was bought of various parties who had interests in the property.

Q. Did you purchase, about May 26th, 1893, lot 5, in block 6, Depot addition; if so, at what price?

A. Yes, sir; $5,997.96.

Q. Did you purchase, about May 23, 1893, lots 6 and 7, in block 6, Depot addition; if so, at what price?

A. Yes, sir; lot 6, $5,995.15; lot 7, $5,995.16.

Q. Did you purchase, about April 25th, 1893, and in December, 1893, lots 8 and 9 and the south 35 feet of lot 10, in block 6; if so, at what price?

A. Yes, sir; lot 8, $4,030.48; lot 9, $4,030.48; lot 10, 35 feet, $2,020.47.

Q. You say that is not a whole lot?

A. That includes the entire lot.

Q. Did you purchase, about May 9, 1893, lots 12, 13, 14, 15, and 16, in block 6; if so, at what prices?

721 A. Yes, sir; lot 12, $7,944.83; lot 13, $7,944.84; lot 14, $7,944.84; lot 15, $7,944.84, and lot 16, $7,944.83.

Q. Did you purchase, about December 30, 1893, lot 18, in block 6; if so, at what price?

A. Yes, sir; $8,000.

Q. Did you purchase, about January 8, 1894, lot 19, in block 6; if so, at what price?

A. Yes, sir; $15,220.29; that includes $220.29 paid to Ashley Gilbert.

Q. Did you purchase, about December 15, 1893, lot *in*, in block 3, in Depot addition; if so, at what price?

A. Yes, sir; $6,244.24.

Q. Did your purchase, about April 26, 1893, lots 2 and 3, in block 3, in Depot addition; if so, at what price?

A. Yes, sir; lot 2, $3,696.49; lot 3, $3,696.49.

Q. Did you also purchase, about the same time, lot 4, in block 3, depot addition; if so, at what price?

A. Yes, sir; $6,250.

Q. Did you purchase, May 31, 1894, lots 5 and 6, in block 3, Depot addition?

A. Yes, sir; lot 5, $4,787.75; lot 6, $4,785.25.

Q. Did you purchase, about May 31, 1894, lots 7 and 11, in block 3; if so, at what price?

A. Lot 7, $4,180; lot 11, $4,180.

Q. Did you purchase, about April 18, 1893, lots 8, 9, and 10, in block 3, Depot addition; if so, at what price?

A. Yes, sir; lot 8, $3,368.04; lot 9, $3,368.04; lot 10, $3,368.03.

Q. Did you purchase, about May 22, 1893, lot 12, in block 3?

A. Yes, sir; $4,811.73.

Q. Also lot 13, in block 3, Depot addition?

A. Yes, sir; $20,000.

Q. Was that an improved lot?

A. Yes; it was entirely covered by buildings; there was a hotel, saloon, and billiard hall. It was right on the corner where the car line turns, right opposite the present engine-house.

Q. Did you purchase, about June 4, 1894, lots 11, 12, and 13, in block 2, Depot addition; if so, at what price?

A. The three lots were purchased at a cost of $17,750.

Q. This is land that was conveyed by the so-called State Line Improvement Company, is it not; it was conveyed by two separate deeds?

A. Yes, sir; it is in two deeds.

722 Q. Are all of these lots that we have given last, commencing with the deeds in 1893, extending down to 1896, property between Bell street and Genesee street?

A. Yes, sir; all those last lots are between those two streets; the last three lots were on the east side of Genesee street.

Q. These lots are not within the limits of the stock yards?

A. No, sir.

Q. For what purpose were they purchased?

A. They were purchased as part of the condition of moving the street-car tracks. The track on Genesee street had been the east track of the loop; it became the west track of the loop, and these

lots were bought to enable the company to turn off on Genesee street without going around a reverse curve. The proposition of the company was that they would vacate the land that they had if the company would remove their track and straighten the track on this corner so as to avoid the reverse curve, which would otherwise have been necessary.

By Mr. DANA: The track had been on what street before?

A. On Bell St.

Q. Paert of these lots 11, 12, and 13 were used in making this change in the street-car line?

A. Yes, sir.

Q. How much was left that it was not necessary to use for that purpose?

A. I think there is a frontage of eight or ten feet on 12th street and it runs wider as it goes back.

Q. There is a considerable frontage yet west of the railroad?

A. No; that land was vacated and the company has taken it within its fences, so that the company really got as much as it gave.

Q. Will you please give me any lots that I may not have called?

A. Lot 11, block 6, Depot addition; we own that, and it cost $12,524.37; lot 13, block 11, and lot 14, block 11, Depot addition, each of which cost us $10,020.22.

Q. Are there any others?

A. Skiles & Western's addition, lot 22, block 6, cost us $8,931.95.

Q. Are there any others?

A. That is everything.

Q. There is a small tract on the west side of Genesee street not enclosed within your fences, but having the remains of two little building- on it. What about that, Colonel?

A. That is land that does not belong to the company.

Q. What is the area of it?

723 A. I think it is the same as all the other lots in that block—40 feet.

Q. Are there any other enclosed lots or lands in the stock yards in this tract described by the witnesses as A that do not belong to the stock yards company?

A. No, sir; I think there are no adverse claims on any of the others.

Q. Does your company own any other lands or lots in Jackson county, Missouri, than those enclosed in the stock yards, in Missouri, and the tract which you bought for the purpose of straightening the street-car line? If so, you may describe any such property.

A. No, sir; I know of nothing except what is included in the stock yards

Q. Any other land in Jackson county, Missouri, than that which is enclosed wesy of Genesee street and between 12th and 19th streets?

A. Our boundary is only in part on 19th street; then it comes up here to the right of way of the Rock Island Company. With that exception, my former description is correct.

Q. There is a part of the ground, then, north of 19th street that is not enclosed?

A. Except in that corner, that does not belong to the company; everything else is enclosed.

Q. Red line that marks the southern boundary of your property shows it truly, does it?

A. Yes, sir.

Q. You don't own this small tract that is left out here between 19th street and your enclosure?

A. No, sir.

Q. Has your company any other lands or lots anywhere in the State of Missouri?

A. No, sir.

Q. Has your company any property of any kind in Missouri other than in Jackson county?

A. No; there is no other property.

Q. Colonel Morse, when you were on the stand the other day I believe you spoke about the condemnation of property for the Rock Island Company down as far as Father Dalton's church. Do you know what State that condemnation is in?

A. I don't know as I referred to the condemnation. There was some reference at one time in the testimony to the property which was taken by the Rock Island Company for its freight depot on Wyoming street and to the purchases which were made there,
724 and in the testimony of Father Dalton reference was made to *cem*demnation which had been begun against the church property, but that no action had ever been taken; that no appraisers had ever been appointed; that there was a proceeding of that kind, but that nothing had been done.

Q. Do you understand that that church property has been condemned for railroad use?

A. I think not. I think they have suspended any active proceedings. It is my understanding that *the* it was the purpose of the Rock Island Company to go up as far as 12th street, but they could not come to terms for the purchase of this church property, and began condemnation proceedings. In the meantime they went ahead and put their tracks in there, and have built their freight depot just south of the church building, and since then have not pressed the condemnation proceedings. I only know that in a general way and not from actual investigation.

Questions by Mr. BOYLE:

Q. Colonel Morse, what arrangement have you with Captain Tough for the conduct and operation of the horse and mule market?

A. The arrangement is this: In lieu of salary Captain Tough and his son are allowed a certain pro-ortion of the net revenue of the company from the commissions on sales and from the earnings on feed in the horse and mule department.

Q. Has the horse and mule business been a sourse of profit to the company?

A. Yes; it generally has been quite a profitable business. This

year it has not been so good for a few months, but still it has been done at quite a profit.

Q. What do you charge for feeding horses and mules in the barn?

A. I could not tell you about that. There is a variety of arrangements to which I cannot testify with accuracy.

Q. You are not familiar with the charges?

A. No, sir; I am not familiar with them.

Q. Who buys the hay and feed for those barns?

A. A large part of it is bought by contract and part of it bought directly through the stable people.

Q. Does the stock yards company buy any of the feed that is used in the barns, directly, Colonel?

A. I think it does, a great deal of it. As I understand
725 your question, do you mean whether it is done through the usual purchasing agency of the company?

Q. Yes.

A. A very large part of it, as I understand it, is bought directly through our regular purchasing agency, but there are times when purchases are made by Captain Tough for the stock yards company.

Q. What proportion of the profits does the stock yards company receive from the barns over there?

A. Fifty per cent. of the net profits after deducting all expenditures of all kinds.

Q. The stock yards company hires all employés?

A. Yes, sir; it is done through the managers of the barn.

Q. And out of the gross receipts the expenses of the business are paid, as I understand?

A. Yes, sir.

Q. And the net profits are divided in the proportion of fifty per cent. to each?

A. Yes, sir.

Q. What were the net profits of 1896?

A. The gross earnings in 1896 were $47,250.64, the expenses were $35,316.34, and the net earnings were $11,934 30.

Q. You have another stable over there, Colonel, that is run by Mr. Gould?

A. Yes, sir.

Q. What is the business that is conducted there?

A. Well, we keep the company's horses there for one thing, and all the wagons and harness are cared for there; then we take charge of the horses of commissionmen, dealers, and other men who want to leave them there, and charge them so much a month for it.

Q. In this statement there other day of the sources of revenue what item included the item of revenue from that business?

A. The item of earnings on feed.

Q. Does the revenue from that barn pay its expenses?

A. I think that it does. Of course the expense is quite largely made up by taking care of our own teams, but I think it pays a

small net return; it is one of the necessities of our business, but does pay a small return.

Q. Have you testified to the income of the stock yards company for any period of time other than 1896?

A. No, sir.

Q. How much time do you devote to the business of the stock yards company, Colonel?

726 A. All that is necessary to perform my duties. As to how many hours a day or days in the week it would be very hard to say; some days I am here all day if there is anything pressing that needs my attention; sometimes I am only here an hour or two in a day; but it is not the time that I am here that represents the time that I give to the company's service. I do a good deal of service outside of my office here. It would be pretty difficult to give any definite answer to your question.

Q. How is your railroad property listed for taxation, by the board of railroad assessors or by the local authorities?

A. It is simply included in the real estate.

Q. You do not make any return of it to the board of railroad assessors?

A. No, sir; we do not operate a railroad; have never done that.

Witness excused.

* * * * * * *

727 And thereupon the defendant L. C. Boyle, as attorney general of the State of Kansas, having rested his defense, the complainants, in order to further maintain the issues upon their part, produced and offered evidence in rebuttal as follows, to wit:

CHARLES F. MORSE, heretofore duly sworn in the cause, being recalled by the complainants in rebuttal, in answer to direct interrogatories propounded to him by Judge Horton, counsel for the complainants, testified as follows, to wit:

Q In the early stage of your examination you were asked if you knew the market value of the good will of the Kansas City Stock Yards Company as an established and completed busines, with its connections and long-established system, and you said you did. I asked you what the good will was worth, and it was ruled out. Now, let me repeat the question. Are you acquainted with the good will of the Kansas City Stock Yards Company, the present company, at the time this so-called act of the legislature was intended to go into force, considering the business as a completed plant, and with all of its connections and surroundings?

Objection, and answer deferred.

Q. How long have you been acquainted with the business of conducting stock yards?

A. Since 1879.

Q. What is your acquaintance with stock yards elsewhere than in the States of Kansas and Missouri; have they come under your observation frequently?

A. In a general way as being connected with the railroad business. I was acquainted with it for a number of years prior to 1879.

Q. With reference to the property of the Kansas City Stock Yards Company, please state briefly what connection the company must have necessarily for the conduct of its business, if any, with railroads, packing-houses, financial institutions, and the like.

Objected to and withdrawn.

Q. In considering the value of the stock-yards plant is it possible from your acquaintance with it to determine the value of
728 such a plant, considered as an entirety, as a completed system, with its connections and various tracks, if any it has?

A. I think it is out of the question.

Q. Are you acquainted with the value of a system of stock yards, of this particular stock yards, and its connections, tracks, privileges, and arrangements?

A. Yes, sir.

Q. Please state to the special master what, in your opinion, the real value of the plant owned, used, operated, and maintained by the Kansas City Stock Yards Company upon the ground which has been testified about was on the 12th day of March, 1897, considering all of its connections and the use of it for stock-yards purposes.

Judge Martin objects to the question as incompetent, irrelevant, and immaterial, and for the reason that the value of the property has been fully testified to.

By Mr. HITE: What we propose to prove is this: The value of that system operated as a unit, considering all of its connections, and with the work which it is actually doing and as a going concern.

Objection overruled.

A. I should place the value of the property in that way at between nine and ten millions of dollars; nine and a half millions, I should say.

Q. Let me repeat it in a little different form. Take the system and property of the Kansas City Stock Yards Company and say what its market value would be as the property stood on the 12th day of March, 1897, and it now stands, with all the connections already made and then existing and as a going concern.

Same objection. Overruled.

A. About nine and one-half million dollars.

By Mr. HITE:

Q. Have you at hand the exact figures of the cost of the property of the stock yards company which it now occupies and uses as a stock yards? I mean exclusive of the improvements.

A. You mean the land?

Q. Yes.

A. The cost of the land, and in stating the cost of the land I

want to make it clear that I place it at the cash cost of the
729 land with what has been done on it in the way of grading. That is the way it appears on our books at all times. The figures that I gave are what it has cost in the original considerations paid for the land and what has been expended on it to put it in the shape it is now in for use, and the total amount is $2,274,285.83.

Q. Colonel Morse, did you hear the testimony given in this case this morning with reference to the area of the lands embraced within certain red lines and described by the letters A, B, C, D, E, and part of the Graham tract?

A. Yes, sir; I heard it.

Q. Please state to the special master whether or not all of the land concerning which Mr. Tuttle testified, embraced within these red lines, is now owned and in the possession of the Kansas City Stock Yards Company.

A. Yes, sir.

Q. How long has the company been in such possession of all of the lands described on the map of Mr. Tuttle, except that which was spoken of as lying east of Bell street, to your knowledge?

A. Do you refer to the land in A and B?

Q. Yes.

A. That is, land west of Bell street to the Kaw river in the main yards?

Q. Yes.

A. The greater portion of that land has been in the possession of the company since 1879, but a portion between the west line of Bell street and the State line was bought in 1887. It has all been in the possession of the company since 1887.

Q. Now, with reference to all of the land shown on the survey which was presented this morning by Mr. Tuttle, comprising something over 136 acres, as stated by him, is the Kansas City Stock Yards Company at this time in the open, notorious, exclusive, and undisturbed possession of such property under claim of ownership?

A. It is.

Q. That is true with reference to the tracts of land that have been formerly used and occupied as streets, is it not?

A. Yes, sir.

Q. State whether or not, Colonel Morse, there are in the lands concerning which Mr. Tuttle has testified as being embraced within the red lines on the map certain portions that were formerly streets and which *heeb* vacated.

A. Yes, sir; there is a number of such pieces of land.

730 Q. Who is at the present time and was on the 12th day of March, 1897, in the open, notorious, undisturbed, and exclusive possession of such pieces of property under claim of ownership?

A. The Kansas City Stock Yards Company.

Q. In stating the cost of the Kansas City Stock Yards Company's lands have you included the cost attending upon the vacation of streets?

A. Yes.

Q. Colonel Morse, with reference to the cost of operating and maintaining the plant which was operated and maintained by the Kansas City Stock Yards Company prior to March 12, 1897, and since that time, I wish you would state to the special master what has been the gross income of the Kansas City Stock Yards Company for the years 1892 to 1896, both inclusive.

Objected to as incompetent, irrelevant, and immaterial and not proper rebuttal. Overruled.

A. The gross earnings in 1892 were $761,733.40; the operating expenses and costs of maintenance of the property were $379,392.13. In 1893 the gross earnings were $840,733.25; the operating expenses and cost of maintenance were $372,107.82. In 1894 the gross earnings were $976,825.62 and the costs of operating and maintenance were $592,728.22. In 1895 the gross earnings were $971,430.46 and the operating expenses and cost of maintenance were $477,208.69. In 1896 the gross earnings were $1,023,870.20 and the operating expenses and cost of maintenance were $549,870.

Q. Please state, Colonel Morse, the aggregate amount of cash dividends paid by the Kansas City Stock Yards Company for the five years which you have mentioned.

A. I do not know that I have it just in that form; I have it by years.

Q. You can state it by years if you have it.

A. In the year 1892 the cash dividends paid were $370,592; in 1893, $296,695; in 1894, $451,133.50; in 1895, $554,816; in 1896, $429,160.50.

Q. With reference to the expenditures which you have given from the years 1892 to 1896, inclusive, please state whether or not all of the money went into operating expenses and maintenance of the plant.

731 A. Yes, sir; that money all went into operating expenses and operation of plant.

Q. Has that money been judiciously and carefully expended for the purpose of keeping the plant in a state of efficiency?

Objected to as calling for the conclusion of the witness. Withdrawn.

A. From your knowledge of the operation and maintenance of the plant of the Kansas City Stock Yards Company, Colonel Morse, will the expenditures for operating expenses and maintenance be diminished in any respect from *from* the average amount that has been expended for those purposes in the last five years?

A. In regard to the year 1897, the total expenditures for operation and maintenance from January 1st to May 31st have been $167,800.36. There are contracts now being carried out for the maintenance of the property as follows: For paving, $75,000; for viaduct and connections, $19,000; for new tunnels, $17,000, making a total of $111,000 of maintenance separate from the operating expenses. From May 31 to December 31, on the basis of the five months' operations which I have already given, the operating ex-

penses would be $239,543.08 for the remainder of the year, making total expenditures for operating expenses and maintenance of the property for 1897 $518,343.44.

Q. Do you say that contracts have been let for certain work or that that company has it in contemplation? Wh-ch is it? Is the work being done under those contracts?

A. There have been contracts made for a large part of the work of paving at so much a thousand for the brick, and, after delivery, a contract for laying the brick at so much a yard; there have been contracts let for the material and for the erection and completion, everything complete, of a viaduct, and the work has been planned and the material contracted for for these tunnels. There will be some labor, which is included in these estimates, which is not a matter of contract, but which forms a part of the cost of the work which is laid out to be done, the cost of which we know very closely.

Q. These sums which have been expended and are to be expended, as you have just testified, are they for operating expenses and cost of maintenance?

732 A. Yes, sir; for those two lines of expenditure.

Q. Are any of the expenditures which you have mentioned intended in the way of an extension of the present system of the Kansas City Stock Yards Company?

A. No, sir.

Q. Colonel Morse, after the payment of cash dividends by the Kansas City Stock Yards Company, what has been done with the remainder of the earnings of the company during the time concerning which you have testified, from 1892 to 1896, inclusive?

A. It has all been expended in the operating expenses and maintenance of the plant except what remains as shown as a surplus at the close of any particular period.

Q. Would that surplus be made up from the amount that was on hand at the beginning of 1892, plus whatever remained after paying operating expenses, cost of maintenance, and dividends for 1896?

A. Yes, sir; that is what it would be.

Q. With reference to the cost of land concerning which you have testified, has that cost of land, which is now being used and was being used on March 12th, 1897, is that the land which was then and is now being used by the Kansas City Stock Yards Company as a system of stock yards?

A. Yes, sir.

Q. Is there included in that statement of the cost of land the cost of any land which was not testified about by Mr. Tuttle this morning as being embraced within the red lines as shown upon his survey?

A. No, sir.

By the MASTER: Do you intend to include those small tracts *e*?

A. I understood the question as being what land was testified about by Mr. Tuttle this morning.

By the MASTER: That is what I understood.

Q. The cost of the tracts marked *e* is included in your statement, is it not?

A. Yes, sir.

Q. In the method of book-keeping employed by the Kansas City Stock Yards Company the cost of maintenance is separated from the cost of operation. The two have been kept in somewhat different form, have they not?

Objection as leading. No answer.

Q. Will you tell us about the keeping of these accounts;
733 what is done in that regard?

A. I think I have already explained very full- the way in which that is done. I think my testimony is as complete on that point as I can make it.

Q. Will you please state the amount of surplus on hand by the Kansas City Stock Yards Company on the 31 day of December, 1896, after payment by the company of all operating expenses, cost of maintenance, and dividends for the year 1896?

A. $188,647.88.

Q. Colonel Morse, I call your attention to the matter of the transfer to the Armour Packing Company of $500,000 by the stock yards company. Please state to the special master whether or not that stock at the time it was transferred was worth $500,000.

A. That stock was worth upwards of $500,000 in cash at the time.

Q. Colonel Morse, do you know the complainant in this case, Charles U. Cotting, and the other complainant, Mr. Higginson?

A. I am acquainted with them.

Q. Are they stockholders of the Kansas City Stock Yards Company?

A. Yes, sir.

Q. Were they stockholders during the month of March, 1897?

A. Yes, sir; they were stockholders in the month of March.

Q. How much stock did Mr. Cotting own during March, 1897?

A. 250 shares.

Q. How much did Mr. Higginson own during March, 1897?

A. 296 shares.

Q. Did each of those gentlemen own all of that number of shares during the month of March, 1897?

A. Yes, sir.

Q. Colonel Morse, it was shown in testimony that the yardage account of the Kansas City Stock Yards Company shows an excess of some $31,000 over the amount that has been stated in evidence as having been received by the company for yardage. Will you please explain that excess.

A. That discrepancy comes from the fact that the total receipts have been figured as having paid yardage, whereas, as a matter of fact, there was some stock that paid no yardage at all. The total amount received by the company from yardage in 1896 was $665,658.05.

Q. And no greater sum than that was received from that source?

A. That is the exact figure.

734 Q. Will you please state to the special master with reference to the issue of $1,667,100 of stock in 1894? State whether or not that issue of stock was paid for in cash.

Objection as repetition.

By the MASTER: I think that has been gone over fully.

Objection sustained.

The hour of 6 o'clock p. m. having arrived, the master arose and adjourned until 9 o'clock a. m., Wednesday, June 16th, 1897.

Morning session.

WEDNESDAY, *June 16th*—9 o'clock a. m.

Taking of testimony resumed pursuant to the adjournment.

Parties present as before.

Colonel MORSE on the stand.

In answer to cross-interrogatories propounded to him by Mr. Boyle, the witness testified as follows, to wit:

Q. You place the value of your property at $9,500,000?

A. Yes, sir.

Q. As I understand you, that represent- every possible item of value, according to your idea—the value of the land, the value of the superstructures, and the good will of the institution. Is that correct?

A. Yes, sir; the property as a whole.

Q. I mean those are the three items of value?

A. Those constitute the items.

Q. Those are all the items you figure in—the value of the land, of the improvements, and the good will?

A. Yes, sir; I just simply say that the good will, as I understand it, and as I tried to explain it, includes everything which is comprehended in the business, which has been acquired by the company; connections of all kinds—packing-houses which have been brought here by our influence and other influences, the capital which has been brought here to enable business to be handled, the work
735 which has been done over this entire period—everything which makes the business part of the concern as distinct from a dead plant.

Q. That is what you designate as good will?

A. Yes; I want to make it a little more ample than by saying good will.

Q. With that understanding of good will I then repeat my question that the three elements which go to make up this grand total of nine and a half millions of dollars are lands, improvements, and good will.

A. Yes; I think I comprehended it all; all that makes the plant complete—those three things.

Q. What value do you put upon the good will as you have defined it; how much value do you place upon it?

A. I put it at two millions of dollars.

Q. How do you arrive at that figure; in what way do you estimate it?

A. One criterion has been the market value of the property as distinct from any valuation of any particular part of it, either lands or buildings. It has had a recognized market value.

Q. What has had a recognized market value?

A. The stock which is represented by the property.

Q. How do you figure the good will in that method of calculation? I do not quite grasp your point, Colonel.

A. In making up the value of the lands and improvements I have taken what I regarded as a fair value of the lands and of the improvements, and in making up my own figures I have regarded what would seem to me a fair amount to consider that it would take if we were starting with just such a plant as there would be there with the naked lands and the improvements on it, and were starting out to bring about the conditions that we have got now, which would mean the bringing in of buyers, of the packing-houses, and the work which would have to be done and paid for throughout the whole country to make known this market; that two millions, as I look at it, is a very moderate estimate to make of what that would cost.

Q. Do I understand you to say, Colonel, that you were guided in determining the value of your good will by the premium that is offered on the stock of the company on the markets? Is that one of the ways?

736 A. I only mean by that that that is what it would seem to be regarded by the market generally, but the way in which I would reach that amount would be, as I say, by making an estimate, as near as such an estimate could be made, of what money would be required in cash to go to work from the beginning and create a market as we have it here, supposing you had such a plant as this would be without any stock-yards business on it.

Q. That is pretty large guess?

A. Not altogether.

Q. Will you just give me some figures by which you arrive at your estimate of the value of this good will as the sum of two million dollars?

A. We have expended in the past three-quarters of a million dollars in one direct line—that is, in getting certain packing-houses established here. I don't think that today we could bring about the same result for the same amount of money. I think that from one million to a million and a half of dollars would have to be expended in order to bring in the packing-houses, and to go to different parts of the country through agents and through the agency of advertising mediums of all kinds and bringing to the attention of the shippers and buyers the various interests which represent a stock-yards business and bringing to this market the men who have stock to buy and sell. If that were done, if it could be done at once, in order to bring about the same result which exists here, and which is the result of all that has been done in all these years, it would require an enormous expenditure in that one particular. I think a half a million

llars would be readily expended in a year just for that one thing it were possible to do it all at once, in one year, that work would ve to be done. These buyers would have to be brought here, ese packing-houses would have to — brought here, before any of e conditions could exist which exist there today as a result of the ork that has been done for 25 years, and I think that my esti- ate in that light is fully accounted for; possibly, it would take more an that, but I know that in the particular matter of packing- ouses there wouldn't be any question but that it would take up- ards of a million dollars to get enough here so as to bring about any of the conditions of a market.

Q. Then, if I understand you, this intangible thing which we call good will is made up of the conditions that have isen by reason of the fact that through your instrumentality you aim you have brought these packing-houses here, and these other stitutions surrounding the stock yards, by offering inducements, ving land, and so on, whereby you have created a market and eveloped a state of affairs that is highly beneficial to the shipper, nd you have also sent out your men on the plains throughout the ifferent sections of the West, and have solicited business and have t forth the advantages of shipping to Kansas City; now, the re- ult of all that has been to build up a market here which, you say, as taken time to do?

A. Yes, sir.

Q. Then that, as I understand you, is what you designate as good ill; is that right, Colonel?

A. Yes, sir; that is what I regard as good will, what is created y the development of a business; in the same way that a news- aper starts with a piece of land and a building, a press and type; t has nothing beyond that, but in the course of years, in the con- luct of that paper it has acquired a great value, on which it can et a return by the business which it has made by making itself a aluable instrument. I think our conditions are very similar to hose. We have built up here a valuable place in which to do usiness—I won't say wholly by our action—but influences have een exerted which have brought about and created a great busi- ess, and that makes a value in the property entirely distinct from what is in the mere naked land and buildings.

Q. There is another element that goes into good will, is there not, Colonel, and that is the good feeling that exists between the ser of that property and the company itself—that is, if there is confidence in the management between the shippers and the stock ards company, perfect harmony of feeling—you may say that that onstitutes a portion of the good will, may you not?

A. Most certainly.

Q. That is one of the principal things, is it not—that is, if peo- ple do not like an institution and will not patronize it, it wouldn't have very much good will, would it?

A. No, sir, and it wouldn't have very much business.

Q. So that that is one of the things that enters into the
738 good will besides the other elements you have designated, is it not?

A. If a company doing business could not create that condition it could not do business and prosper, and that has been the relation of the stock yards company to these shippers which has enabled it to increase its business.

Q. Now, Colonel, I will give you a hypothetical condition; suppose it is a fact that large numbers of shippers, feeling that your charges are exorbitant, feed their hogs, we will say, in the trains because they are not satisfied with your charges, and therefore they are not willing to feed *your* hogs in your yards. Now, does that affect your good will any?

A. I don't think so necessarily. If it is more profitable to them to feed in that way, it is something which they have an absolute right to do and of which the stock yards company certainly cannot complain.

Q. But if they feel that your charges are too great, and therefore will not patronize you in the ordinary and usual course of business, don't you think that upon your theory your good will is thereby affected?

A. I do not think that it is, for it does not prevent them from coming to this market and using it.

Q. One of the things that goes to make up a stock yards and its value is the fact that stock is fed there, and of course, if you don't sell feed and yard stock, of course there would be no stock yards; now, one of the elements of your profits *if* the feeding of stock; now, I say, if by reason of your charges a great number of men refuse to patronize you who are naturally obliged to put their stock in your yards, is not your good will somewhat affected by that?

A. We have not regarded the value of the business as affected by that.

Q. You know, as a matter of fact, that a great many shippers do feed their stock on the trains, don't you?

A. Yes, sir; I have heard so.

Q And you know the reason, do you not?

A. I have understood it was because they thought it was more profitable to do so.

Q. The reason they would think it more profitable is because they regard your charges as being higher than they can afford to pay?

A. More than they can afford to pay, I presume.

Q. Is not your good will affected by that?

A. No; I don't think so.

Q. How much did you pay Armour for locating his plant here?

739 A. We paid what we regarded as a cash donation of $500,000.

Q. In stock?

A. Yes, sir.

Q. How much has the Armour Packing Company paid you back

n stock or money? I don't mean, now, in any indirect benefits, ut I mean in dollars and cents.

A. Not a dollar.

Q. Haven't you paid pretty well for this good will of yours?

A. We have paid a good price for it and I think we have got a good return for it.

Q. This half a million dollars' worth of stock has been earning lividends right along the same as the rest of the stock?

A. As I mentioned before, that was the same as a cash payment.

Q. That half a million of dollars has gone into this seven and a half millions cost of this plant, has it not?

A. Yes, sir.

Q. You gave some stock and land to the Fowler Company, did you not?

A. Yes, sir.

Q. Has the Fowler Company ever paid you anything in dollars and cents?

A. No, sir. I will explain that by saying that we have received, indirectly, many times what we have paid, but as a cash transaction we have received nothing.

Q. Did you give the Fowlers any stock? I think it is in the record that you did.

A. I think we did; if it is in the record I would rather not try to remember it now.

Q. The land and the stock that you gave them enters into this seven and half millions that you have spoken of as the value of the plant?

A. It enters into what I would regard as the entire value of the plant, but it does not enter into what has gone into the value of any specific parts.

Q. It has gone in as a part of the six millions which you say this plant has cost you?

A. Yes, sir.

Q. The same as the different donations that were given to the Armour Packing Company?

A. Yes; as part of the money expended.

Q. It is a part of the six millions?

A. Yes, sir.

Q. The Fowler people haven't given you anything back in the way of dollars and cents, except in this indirect manner that you spoke of?

A. No, sir.

740 *A. No, sor.*

Q. Now, you have made donations of land and stock to several institutions around the stock yards?

A. Yes, sir.

Q. None of those institutions has ever paid you back a dollar, except in this indirect manner that you spoke of, have they?

A. That is all.

Q. And the stock that you have donated in this way has been drawing its dividends the same as any other stock?

A. Yes, sir.

Q. Then, as I understand you, finally, in making up the item of two millions of dollars one item would be the amount of stock which you count as cash and the amount of land which you count as cash that the company has given to these different institutions, and also the amount which it has cost you to send out traveling men throughout this western country to sound forth the praises of the stock yards at Kansas City, and the cash donations to these institutions; those are the elements that go to make up that two million dollars?

A. Those are some of the principal elements; there are others; of course, they run into endless details, the things that have been done and are being done all the time to advance the market here, and include a great many smaller matters, but those are the principal things.

Q. Now, this expense of sending men out has been charged up in your books here all through those years?

A. Certainly.

Q. Do you think your good will would be affected, Colonel, if you were to reduce your rates according to the demands of this law? Now, this good will, this good feeling, that has been built up between the shippers and the stock yards company and the business that has been built up here, would that be affected by the operation of this law?

A. It certainly would be very much affected in its effects upon the value of the property.

Q. Would it? This good will represents simply just what it implies, the good will of the people towards the business.

By Judge HORTON: He did not limit it in that way.

A. That is not the way I look at it at all.

The question was withdrawn.

741 Q. You think that your good will would be affected if you were to put in the rates specified in the law, which would satisfy the shippers better than the rates which are now in operation? You think your good will would be hurt by that, do you?

A. I have tried to explain that the good will is a part of the value of the property, and the whole property would be decreased in value probably more than one-half if the rates made by the Kansas law were put into force, and I think the good will would shrink out of sight.

Q. How could it be affected? It is nothing that you can get hold of with your hand; it is something that is absolutely intangible, is it not?

A. It is the value of the business as I look at it—the live business that exists—a value on which a return can be made.

Q. That is, your land and your improvements——

A. (Interrupting.) The land and improvements would not make much of a return if we did not have a worked up business.

Q. I know, but the volume of that business is the principal thing,

so far as good will is concerned. The number of people who feel kindly toward you and are willing to patronize you in preference to anybody else, isn't that good will?

A. If the rates should create a deficit instead of a profit, I do not see that there would be any value in the good will or anything else about the property.

Q. We will take now as an example this state of facts: There are two drug stores. One on this corner over here and one right opposite on the other corner. Both have an equally good stock and the buildings are the same; but the business management of one store is affable, genial, and pleasant and has the run of the trade, and the other is not genial and pleasant and hasn't the run of the trade. If I were to come into that locality and desire to buy a drug store, which one would be the more preferable? Which would I naturally purchase?

Judge Horton objects to the question as incompetent, irrelevant, and immaterial. Objection overruled.

A. You would purchase the one at which the largest business was being done.

Q. Why would I do that?

742 A. Because, with the same plant and conditions otherwise equal, the one would be the most valuable to you in which there was a large and lively business.

Q. Would there be any good will that I would purchase there?

A. That is what I call good will, what you would pay more where the large business was.

Q. Because there was more business being done?

A. Yes, sir.

Q. That is, more people went there?

A. They were selling more goods and making a larger profit.

Q. That is what you understand to be good will, is it not?

A. Yes; what is the value in the business that is going on.

Q. Doesn't that condition which I have just described grow out of the good feeling which exists between the patrons of the institution and the institution? Isn't that exactly it?

A. I think that is only a very small thing connected with it. I will illustrate it in this way: As appears in the record here, on account of conditions produced here in Kansas for the last six or seven years, there has been no material increase; in fact, a decrease in stock during that time. The business which has been secured and which has made a again in the business of the stock yards company has been wholly in remote territory which had done its business theretofore through other channels, and I do not think there has been a particle of sentiment that has entered into the minds of the shippers in any of this competitive territory. They did not inquire into anything except the one point, whether they could get more money by coming here than by going elsewhere. We tried to demonstrate to them that they could, and have been successful in bringing them here, and if it could be demonstrated

to them that they could make more money at some other point than here every one of them would leave us.

Q. Now, coming back to the question I asked you in the first place, what is the good will which I have described in this drug store? What does it consist of there?

A. As I understand it there, everything else being equal, the prices of the goods being the same, that the more pleasant and agreeable the person who was doing the business the more business that would attract, but that would only attract the business under even conditions as to prices, qualities, and everything that
743 was being sold. If the man across the street should cut prices five or ten per cent., the affable feature would not count for very much.

Q. Coming back still to the question which you have not answered, what is the good will that you buy with this drug store?

A. It is the business which has been created by whatever means that the man carrying on the drug store has had at his disposal.

Q. That business is simply the result of the good feeling that exists between him and the public, is it not?

A. It is whatever has made his place a place where he can do a large business.

Q. Under the example I have given you, that is what it would be?

A. That supposes that they *they* charge the same prices, and that the man with the pleasant qualities has attracted more business.

Q. You charge the same prices that they do at Omaha?

A. Yes, sir.

Q. You charge the same prices they do at Chicago?

A. Yes, sir; and at Wichita and St. Joseph.

Q. And St. Louis?

A. Yes, sir.

Q. There is no question of the cutting of rates so that you attract business by anything of that kind, is there?

A. No, sir. That is just the point. It is other considerations that have been brought out here, and they have given us a better market.

Q. Here are two drug stores charging the same rates exactly, of equal accessibility to customers, and yet one does a larger business than the other. It has a good will, which the other does not possess. Now, in your case you have charged up in favor of the stock yards and against the people of Kansas in this inquiry every dollar that you have paid out to purchase this good will, haven't you?

A. Yes, sir.

Q. Then you go to work and add two millions of dollars to the value of this property for this good will, the cost of which has already been once charged, do you not?

A. We have created that value by the payment of that money, and we are entitled to estimate it in our value.

Q. You have paid out a million and a half of money in the purchase of this good will, and you have charged it up in favor of the

stock yards company, and now you want two million dollars more than that, Colonel.

744 A. Well, in any business transaction, as I understand it, if you put one dollar in an enterprise or a property, and it becomes worth three, you are entitled to put that value upon it. That would be my answer. What we have paid for it has realized to us a very considerable profit.

Q. Then, if that is treue, your good will ought to be worth four million dollars, because it ought to be worth just exactly double what you originally paid for it in order for you to get the proper advantage from this two millions. Isn't that treue, Colonel?

A. I hadn't thought of it in that light.

Q. Is not that the only light in which you can properly present it, because if you have already paid for it and have got it charged up here, why certainly you wouldn't charge us again with it, would you?

By Judge HORTON: I want to object to the question. He says that they paid this much for this part of the business. They did not pay that much money simply to pay it out, but they paid it to create a business, just as a person will pay one hundred dollars for a business and that particular business may grow to be worth ten thousand dollars, yet you would say that it ought to be valued only at what he paid for it.

Q. Taking Judge Horton's suggestion, I still cannot harmonize your statement now. You say that the company paid out a million and a half of dollars in making these connections around about you by the donations of cash and land and stock to these packing-houses and other institutions, whatever they may be. Now you say that those connections constitute your good will, and that the good will is worth two millions of dollars because it would cost you that much to replace those conditions, so that you would develop the same state of affairs that you have now. Now, I say if your good will has been already paid for, and you have got it charged up against us, how can you charge us again with it?

A. I cannot see it in that light, General. I do not know that I can make myself any clearer by any further explanation of it.

Q. Suppose we wipe out these plants, these packing-houses. You say it would cost you two millions of dollars to induce those people to come here again and build up their plants and make the same conditions that exist now, do you not?

745 A. What I mean to say is about like this: that if today, we will say, every condition except the stock-yards business was in Kansas City, with just the same stock in the country, just the same railroads, and everything else, and we started to build up a stock yards, it would cost between seven and eight million dollars—over seven million dollars—to establish a plant, and that would represent, when it was done, simply a dead piece of property. There would be nothing there which would have any business about it. That then, if I had two millions of dollars to spend to try to create a market, I think, as a matter of estimate, with that money I

could probably bring about somewhat near the conditions we have today. That would represent the way in which I have named the two millions of dollars as the amount of expense in that direction.

Q. That would constitute the good will?

A. That would constitute the cost of establishing the business.

Q. Good will?

A. Well, call it good will—to bring the conditions here which are now here.

Q. Of course, you got these plants here cheaper formerly than you could get them here now, didn't you?

A. I think so.

Q. Well, say that it did cost you two millions to get them and it cost you a million and a half of dollars to develop these conditions that you speak of, we will say in round numbers that that is what it has cost you, Colonel. Do you understand my question?

A. What it has cost us to bring about the packing-houses and those things?

A. Yes. It has cost you a million and a half and you have charged us with a million and a half of dollars.

A. Yes, sir; those amounts show as having been expended.

Q. Well, now, how do you figure these additional two millions of dollars that you want to put into the value of this plant? You just now said, Colonel, that you had put these things in; that you would have to pay out two million dollars in cash that would constitute the cost of what you think ought to be designated as good will. Now, I say, if it has cost a million and a half to establish these things, and you have already charged us up with the million
746 and a half of dollars, where do you get this additional two millions that you now try to put in and that you designate as good will?

A. I was assuming the condition—the price that it would cost to create just a dead plant, the buying of the land and establishing the plant there, the amount which would be represented by land and improvements, and that then it would be necessary to create the business, and I say that it would take all of this two million of dollars or more to bring about the conditions that make that now a live plant and a live concern.

Q. This plant was dead at one time because these institutions were not there?

A. Yes; and it had very little value.

Q. You spent a million and a half of dollars in putting them there and thereby you created this good will. Well, now, you have charged us up with this million and a half of dollars and it appears on the books, does it not?

A. Yes, sir.

Q. Well, now, where do you get these additional two millions of dollars that you now want to put on?

A. It seems to me, as I look at it, that that would be the case in any business whatever, that the amount which was invested in these things I have named to create the business may not represent by a very large part what the value of it would be at any given

time, and I should refer again to an instance like the newspaper. There is no comparison between the value of the Kansas City Star property as a dead property and what it would be worth as a live concern, and the same principle would apply to a property like the stock yards, where there is a value in excess of lands and buildings as such because of the business which has been created.

Q. There is no difference of opinion between you and me on those points, Colonel, but you have undertaken to designate and specify certain definite sums that you have paid out and which have gone to make up and develop conditions which you are pleased to term good will.

A. Yes.

Q. Charges that appear upon your books and have gone into this record as a part of the cost of this plant. Now, what I can't understand is where you get your calculation as to the value of this intangible something called good will for which you charge us two millions of dollars in addition to what you have already
747 charged us with as the cost of developing this good will. In other words, Colonel, you have admitted here that if this plant was built down there today just as it is, but with none of these connections, that it would cost you two millions of dollars to bring the packing-houses and other institutions that go to make up a valuable and advantageous market.

A. Yes, sir.

Q. You say it would cost you two millions of dollars to do that, and that the two millions of dollars would be the value of the good will of the business. Now, we say that when you have put in that two million of dollars, spent it, and charged it up on the books of the company that that would constitute the value of the good will.

A. Yes, sir.

Q. Where do you get the other two millions, then?

A. I think the difference between us is that you are talking about cost and I am talking about values. I think that is really the difference, because the cost of a thing does not represent its value.

Q. You say it cost a million and a half to put those things there. Do you mean to add a half million more or that the whole business would be three millions and a half?

A. I mean just what I have stated; that, in addition to the value of the property, to which I testified as to land and improvements, that the value of the business or the good will is two million dollars.

Q. Just tell me, then, how you make up your value of two million dollars of that good will.

A. The items which you refer to as being part of the cost do not appear in any way, shape, or form in the value of the property as estimated in lands and improvements. Now, these items have a value to them, although we cannot show it in any tangible form; we cannot show that we own the packing-houses or the land on which they stand, or anything of that kind, but they have a value to us in the business which they enable us to do; that is what I say is worth two million dollars. It would cost that or more to recreate

them. It would cost two million dollars to recreate and establish the packing-houses and bring about the other conditions which make this live business at the stock yards.

Q. Then, do I understand that the amount of money it would cost to establish these conditions would be the value of your
748 good will; is that what I understand you to mean?

A. I mean to say that that good will, if we did not have it at this time, would cost an expenditure of two million dollars or more to secure it.

Q. To bring about the connections and the conditions?

A. Yes, sir.

Q. You have spent, we will say, a million and a half to bring about these conditions?

A. Yes, sir.

By the MASTER: What entered into your estimate of the value of the real estate down there that is occupied by the stock yards company, used in the operation of this plant?

A. My estimate of the value of the land.

By the MASTER:

Q. What entered into your estimate—upon what did you form your estimate of the value of the land?

A. Mainly on what similar land had been selling for and had cost in the previous years.

Q. What made the value of that other land?

A. That had been increased by the growth of the business of the city—the growth of population of the city, including, of course, the growth of the stock-yards business and of the packing-house business.

Q. How much of this nine and one-half million dollars *to* you put in as the value of the land?

A. My testimony was $5,685,240.

Q. What land does that comprise?

A. That is the land shown on one of the blue prints which was made an exhibit in the case.

Q. Do you include in that these small parcels outside of the stock yards?

A. Yes; I include those detached lots. There was about an acre included where the viaduct runs across it.

Q. Did that include these 142 acres near Argentine?

A. No, sir.

Q. Well, do you know what the value of the land is that is inside of the yards and used by the stock yards company? That would include this 7 acres of land over there north of the quarantine yards.

A. I want to get at your item of the value of the lands.

By the MASTER: My recollection of the testimony of Colonel Morse is that he estimated the value of the land at about five — ½ million of dollars.

A. Yes; those figures would be changed a little from the fact that in this actual survey by Mr. Tuttle in some cases there is a varia-

tion from the figures that I used. He gives more acres than I claimed in the main yards. I think there — two or three
749 acres more in the main yards than I claimed.

By Judge HORTON: What effect would that have?

A. The effect is to increase my figures between one and two hundred thousand dollars, because the excess of land which he found is in that part of the yard which is the most valuable, and the only place in which there was a shortage is in the accretions, which were valued at quite a low rate. In the main yards and in the quarantine yards he found more property than we claimed.

Q. This property that you lately purchased down here in Missouri you had to pay very large sums for, did you not, Colonel?

A. Yes, sir.

Q. I would like to have you state to the special master why you place the values that you do upon the portion of the land in Kansas, making it very valuable. Why do you do that?

A. I did not apply the highest prices that we paid in exceptional cases nor even the average prices that we paid on all of these blocks, but I applied a price which I thought was a fair price, taking into consideration what had been paid in these high places and what had been paid at other times, but, as I stated in my direct testimony, I couldn't see any difference in value, as I was estimating it.

Q. What has made this increased value in these lands down there? You bought it for a nominal sum originally?

A. Yes; there was no city there then.

Q. Give us some of the elements which have gone to make up this increased value.

A. It has been largely a growth in and about that locality of a large city by the great development of the railroads and other heavy business, and the very limited area of land there is there between the Kaw and the bluffs has made every foot of it apparently very desirable and very valuable for such purposes as it is being used for. A person with any sort of an eye to the future would see that if in future years as much is to be taken as in the past it is a matter of only a few years when the little odds and ends which will be left will be very much more valuable than they are now.

Q. Then the packing-houses and the railroads have had nothing to do with increasing the value of the land down there?

750 A. I said that the growth which has made a great commercial city around that place has brought about this condition of increased values.

Q. Then these great enterprises that by the thrift and wisdom of the stock-yards management have been brought here have mater-ally increased the value of the land of the stock yards company, have they not?

A. It has been one of the elements; yes, sir.

Q. These influences have flown right into and benefited the stock yards company in that way, have they not?

A. Yes, sir.

Q. You say the value of the lands is $5,685,240?

A. Yes, sir.
Q. What did you place as the value of the improvements?
A. $1,593,038.07. The other items besides lands and improvements was personal property and cash, amounting to $15,377.25. There was that item.
Q. None of your good will has gone into the land, Colonel?
A. No, sir.
Q. That is all, I believe.

Questions by Judge MARTIN:

Q. You stated yesterday in your examination that the cost of the lands of the stock yards company, including the grading and the cost attendant upon the vacation of streets, was $2,274,285.83.
A. Yes, sir.
Q. In that estimate I believe I understood you to say you included the cost of the tracts purchased within then last two or three years between 7th street and Central avenue and between Wood street and Water street?
A. Yes, sir; it included everything that was on Mr. Tuttle's survey included within the red lines.
Q. Those lots have never been improved or used for stock-yards purposes?
A. No, sir.
Q. Have you done any grading on those lots?
A. No, sir.
Q. Any filling?
A. No, sir.
Q. You gave in cross-examination several days ago a detailed statement of what each tract had cost the company, and you said that you thought that included everything, but that you would have it checked over and see if anything was omitted. Have you done so and have you found that anything was omitted?
A. I think that that was correct as to the considerations and the expenses which were immediately connected with the trans-
751 fer of the property, but, as I tried to explain yesterday, it has been the custom to charge directly to the land what was in any way work on the land as distinct from what was work on the improvements. The quarantine yards, for instance, is a striking case. Probably there has been charged up to that land in improving it and protecting it more then the original cost of the land, and it is the same way with some of the land in the main yards.
Q. But you say that no tract was omitted in that cross-examination of yourself?
A. I think not; I don't know as I could say absolutely, but I think it includes all the tracts of land within the property of the stock yards company.
Q. Including these tracts between 7th and Central and between Wood and Water streets?
A. Yes, sir; it includes those lots.
Q. Does it include the tract that is on each side of James street?

A. Yes; that little tract that is used on one side for the purpose of a viaduct.

Q. How much of the width is occupied by that viaduct?

A. I think not to exceed 20 feet; 25 feet, possibly.

Q. Now, does this estimate of the cost of land include the cost of the property west of Water street?

A. Yes, sir.

Q. That has never been enclosed for fencing, has it?

A. No, sir; I think I testified that the use of it so far has been as a dumping place for the material taken out of the yards.

Q. There are no pens on that ground?

A. Not west of Water street. I think there is an alley along there, but I am not sure; I am not perfectly certain about that.

Q. There was never any ground platted west of Water street?

A. No, sir.

Q. Now, does this item of $2,274,285.83 include the cost of filling that property west of Water street?

A. No, sir; not that land.

Q. Does your estimate include the tract that has been called D, which is south of the Missouri Pacific and Union Pacific railways?

A. Yes; that is included.

Q. That land has never been enclosed?

A. No, sir.

752 Q. No stock-yards improvements on it?

A. No, sir; I think it has been used to some extent for dumping, but there are no improvements on it.

Q. Have you filled any of it?

A. No, sir.

Q. There is no cost for filling that?

A. No, sir; that is put in at the original cost. I think there has been no additional cost to it in any way.

Q. Does this estimate of cost include the cost of piling along the river or in the old bed of Turkey creek?

A. I think it does; yes, sir.

Q. And it includes the cost of riprap-ing on both sides of the river?

A. Yes, sir.

Q. How much was the cost charged up against the land in the main yards in Kansas for grading?

A. I could not answer that without reference to the books; it would have to be picked out from accounts running over a great many years, because it was done at intervals; it would need a complete statement in order to give the exact figures.

Q. You cannot do that?

A. No; not without having a statement made up by picking out the items from year to year.

Q. How much was the cost of grading that part of the main yards in Missouri west of Bell street?

A. I could not give that, either; there was a considerable cost. That item could be procured; a statement could be made of it.

Q. How much in the recent addition between Bell street and Genesee street?

A. I could not give the figures without taking them from the books. The grading only consisted in leveling the uneven lots; they were generally as level as they are now, but in some cases there was a cellar or a bank a few feet above the grade of the street, and we had a force of men in there with scrapers some little time. We have it all as a matter of record.

Q. How much for the grading in the north yards—that is, between the north line of the Missouri Pacific railway and the north line of the Graham tract, and between Wood street and Water street?

A. I could not say.

Q. Over what period of time do the accounts for the cost of grading extend?

753 A. There was a considerable part of the cost incurred prior to the organization of the present company, but the large expenditures have been made since 1884. All of the raising of the grade from the low grade down near the river level in the main yards and in the quarantine yards has been done since 1884.

Q. There had been a great deal of grading, filling, pipling, and riprap-ing done before you came here?

A. There had been nothing much done before except the building of a fee jetties, which ran out into the river to prevent the cutting away of the exchange building; it would probably have been washed away if the jetties had not been built.

Q. Hadn't there been a great deal of grading done and a great deal of piling work done in the old bed of Turkey creek before you came here?

A. There may have been. I don't know. I never knew anything about that. I would hardly think there would have been any piling there; it was only a basin that had to be filled up.

Q. It was, however, sandy, was it not, underneath?

A. Yes, sir; that is the best kind of a foundation; all of the packing-houses and elevators rest on sand; we did not put anything under any of our buildings in the way of piling; built them right on the sand.

Q. Was there not a good deal of piling put under the exchange building?

A. Right on the river bank, where it was built almost in the river, but in the portions which were built on the solid sand there has been nothing put under the foundations except plank under the footing course.

Q. Does this estimate of cost include the cost of filling what is called the quarantine yards?

A. Yes, sir; that was a large item.

Q. How much was that?

A. I cannot say exactly, but it is my recollection that it ran about six or seven thousand dollars an acre. I do not give those as exact figures at all.

Q. Does this include the cost of grading that part of the ground leased from the Union Pacific Railway Company?

A. No, sir; I think I have already testified that that is charged out as rent of the land; that was the contract under which we got it from the Union Pacific, that it should be filled, and we filled it at about a cost of about fifty thousand dollars; we charged
754 it out at six thousand dollars a year as rent of the property and expenses.

Q. Do you claim that the cost of these stock-yards lands to the company—I mean the direct cost paid in the acquisition of the title—was any greater than you testified as to the separate tracts a few days ago?

Objected to as incompetent, irrelevant, and immaterial, and calling for a conclusion which ought to be drawn by the master. Objection overruled.

A. I think the statement made in regard to the considerations paid and the immediate expenses connected with the transfer of the lands, as made from the land ledger, was a correct statement as to the original amounts paid for these various tracts of land in procuring the title.

Q. That is, the statements made in your cross-examination several days ago?

A. Yes, sir; and the difference between the sum of those amounts and the gross sum which I have testified to has been made up of the various items from time to time of expenses incurred on those tracts of land, including, of course, the cost of the streets which have been vacated and the expenses connected with the sales of the tracts which are described in the land ledger.

Q. What has been the cost attendant upon the vacation of streets?

A. It represents a large amount; the main cost was the moving of the street-car tracks from two streets; that cost very nearly one hundred thousand dollars; that was one of the conditions of the vacation of the streets; the idea was to restore the conditions of the streets so as to be as good as they were before; of course, there was some grading; there has been some grading in all of these places, and there has been about the same class of expenses connected with this land as with the other land, in addition to the cost of moving the street-car tracks.

Q. Has anything been paid to attorneys for procuring the vacation of these streets?

A. I think there were attorneys' fees paid in connection with these matters; in all of our land matters we had to employ attorneys to advise about various things.

Q. How much was paid to attorneys for their services in the matter?

A. I could not say.

755 Q. Was there anything paid to the councilmen or the city officers for their influence in procuring the vacation of the streets?

Here the master suggested that the witness make a statement in brief form, showing the items of cost in connection with the lands, and present it as his testimony upon those points. The witness agreed to do so.

Q. You testified yesterday that the expenses for the year 1892 were $379,392.13.

A. No, sir; I think that is not exactly my testimony; that was the cost of operating the plant and maintaining the property; I desire to make that distinction because maintenance was not a part of operating expenses.

Q. You say maintenance is not a part of operating expenses?

A. I say it was not charged as an expense item. I testified on that subject quite fully in my original examination, that the cost of maintenance of the property had been charged until this last year to construction account; that the items which had been charged into construction account were the costs of the maintenance of the property.

Q. Now, do you mean to say, Colonel Morse, that the whole expenses of these yards was not included in the statement on your general ledger?

A. Everything which we regarded in our accounts as operating expenses was included in the general ledger, just as it has been taken off, but what was paid out in the renewing of the property each year I have classified here as maintenance, and that was kept in a construction account.

By Judge HORTON: Separate from the expense account?

A. As separate from the expense account.

Q. The expenses for 1892, as shown by the books, were $296,377.03?

A. Yes, sir.

Q. That is already in evidence?

A. Yes, sir.

Q. What makes up the difference between that amount and the amount shown by your testimony, which difference is $83,015.10?

A. The difference is made up by what was paid out for the various renewals of buildings, reconstruction of buildings, and all classes of improvements, which went into the plant which we were operating, but which we did not consider as an expense, and therefore charged to construction account.

756 Q. Does not your account under the head of repairs include the matter of renewals?

A. No, sir; it does not.

Q. What renewals were made in 1892 that amounted to $83,015.10?

A. I haven't the detail of them here, Judge Martin.

Q. Can you give us those details; they can be procured, can they?

A. Yes, sir.

Q. Why were these items of renewals not put in as operating expenses?

A. I think my former testimony covered that point fully. It was something to this effect: That in all of this work which we were

doing we were doing it on so much larger and better scale than it had ever been done before that it was put into construction account, and until the last year was capitalized; while it was taking the place of other work already on the ground, it was on so much better and larger scale that we regarded — as really new work.

Q. A new investment?

A. I will give you an instance: In the case of our hog sheds, the original structures were flimsy affairs, good enough at the time, but when we rebuilt them we rebuilt them in a much more permanent and expensive form, and that cost we put into the construction account. The same thing was true with many other items to which I have testified, and the amounts thus expended were capitalized up to the year 1896.

Q. The net profits in 1892, as shown by the company's books in evidence, were $465,356.37. Do you claim that there is any error in that account?

A. As I understand the question, that statement of the profit and loss account is perfectly correct, and it is the difference between the operating expenses which I have referred to here and the gross earnings; but the statement which I made yesterday, on which I gave these figures, were the expenditures from the gross earnings, which included operating expenses and the cost of maintenance for that year; in other words, before there was any net result which could be used in the payment of dividends, the full amount of $379,392.13 was deducted.

Q. The difference of $83,015.10 was capitalized?

A. Yes, sir; in that year.

Q. Now, in 1893 you testified that the expenses and main-
757 tenance amounted to $372,107.82?

A. Yes, sir.

Q. While the books of the company, introduced in evidence, show that the expenses were $298,915.55; how do you account for the difference of $73,192.27?

A. In the same way as in the answer to the previous question.

Q. That difference was capitalized, was it?

A. Yes, sir.

Q. The statement taken from the books showing that the net profits of 1893 were $541,817.70 was correct, was it not?

A. In what year was that?

Q. 1893.

A. The operating expenses, deducted from the gross earnings, as I understand it, would make that amount. It would show on the profit and loss account.

Q. That $73,192.27 was capitalized the same as the other?

A. Yes, sir.

Q. In 1894 you testified that the operating expenses and maintenance amounted to $592,728.22?

—. Yes, sir.

Q. While the books of your company, offered in evidence, show that the operating expenses were $349,943.33, making a difference of $242,784.89; how do you account for that difference?

A. That difference was what was expended in the maintenance of the property.

Q. Now, in 1894, you were extending the plant in Missouri, were you not?

A. In 1894; yes; the plant was extended somewhat in Missouri that year.

Q. Is that $242,784.89 the cost of these improvements or part of the cost?

A. Some part of it; yes, sir; paid out of the earnings.

Q. That was capitalized also?

A. Yes, sir.

Q. The statement that the profits of 1894 were $626,882.29 was correct, was it not?

A. That is correct in the same way that I have already explained. It is the difference between the operating expenses and the gross earnings.

Q. That was capitalized?

A. That was capitalized; I mean the difference between the operating expenses and the maintenance was capitalized.

Q. In 1895 you testified that the cost of operation and maintenance was $477,208.69. The books show the expenses to be $360,523.46; how do you account for the difference of $116,685.23?

758 A. That amount was put into the maintenance and improvement of the property.

Q. And was that capitalized?

A. Yes, sir.

Q. Was that wholly or in part for extending the plant into Missouri?

A. Only in part.

Q. About what part of it?

A. I could not answer that without the detailed accounts for that year.

Q. The books of the company, offered in evidence, show that the profits for 1895 were $610,907; was that correct?

A. That was the correct difference between the operating expenses and the gross earnings.

Q. You testified that in 1896 the expenses and maintenance amounted to $549,870, while the books show that the expenses were $368,059.05. How do you account for the difference of $181,810.95?

A. That was the amount expended in renewals and in some cases in improvements.

Q. Were these extensions into Missouri completed in 1896?

A. Yes, sir; but the larger part of the expenditure in 1896 was in the old yards.

Q. In doing what?

A. In rebuilding hay barns, adding very largely to the paving in that part of the yards, in renewal of a number of other buildings, in rebuilding the large sheep shed, hog sheds, and a great many buildings that were entirely renewed.

Q. When were those large horse and mule stables constructed?

A. I think the first of them was along in 1892 or 1893. They have been built along at different times in the last five years.

Q. You commenced the extension of your yards into Missouri in 1893, did you not?

A. In that part of Missouri; but we have had a considerable property in Missouri for a good many years, and we have been building on it right along.

Q. I mean your estensions east of Bell street.

A. Between Bell street and Genesee street it has been done since 1893.

Q. And this difference in these different years is attributable largely to the building of these horse and mule barns in 1893 and down to the present time?

A. They form an item, but there was a great deal of expenditure going on in other parts of the yards.

Q. Your books, offered and received in evidence, show that
759 the net profits for 1896 were $655,811.15; is that statement correct?

A. That is a correct statement of the difference between the operating expenses and the gross earnings.

Q. You say that $181,810.95 was capitalized?

A. No; that was not.

Q. Why wasn't it?

A. I think I explained that very fully in my original testimony, and I should prefer, if it is allowable, to have that testimony repeated as an answer to this question, because I then went into a detailed explanation, and I cannot state it any clearer than I did then.

Q. I do not ask for any details, Colonel Morse; just for the reason.

A. The reasons were that the company had very nearly reached the limit of its authorized capital, and that the small amount remaining had been appropriated practically for a special purpose, which was to pay for the additional land which was needed to square out the yards at Central avenue; that with these few additional things done it was regarded as a completed plant, and that there was no reason for any further capitalization. Another reason was that we regarded the business as approaching a maximum now; it has not varied materially from year to year.

Q. How was that amount of $181,810.95 for 1896 disposed of or treated?

A. It is carried now simply as surplus; it might properly, and would have been, probably, if this matter had not come up, charged off to profit and loss account; that is the way all such items are being treated now, and it is the proper way to treat them.

Q. You stated, I believe, yesterday on cross-examination that from January 1st to May 31st, 1897, the operating expenses had been $167,800.36; is that correct?

A. Yes, sir.

Q. Does that include the cost of maintenance?

A. Yes; but I think I explained yesterday that in the winter

months there is comparatively little expense in the way of buildings or anything except just the little ordinary yard repairs; there has been one small amount expended, and there have been contracts made prior to this time which amount to $111,000, which are now in process of being carried out.

Q. The paving that you spoke of and some of the other
760 work has been going on for two or three months, has it not?

A. No, sir; we have only lately completed our contract for brick paving; we have made contracts for the construction of the viaduct and connections and have arranged for the work on the tunnels, but we hadn't paid, up to the 31st of May, anything on those items.

Q. Had you paid anything on the vitrified brick?

A. I think not; if we have, it has not been very much; the contractor is now beginning the delivery of the brick.

Q. Whatever has been paid up to May 31st has been included in the $167,00–?

A. Yes; there has only been $4,045.61 in maintenance and renewal up to May 31st.

Q. You say there have been contracts made for paving, for viaduct, and connections and for tunnels amounting to $111,000?

A. Yes, sir.

Q. How much of that is included in the $167,000?

A. Not any of it.

Q. You say the expenses for the remainder of the year, based upon the expenses for the time prior to May 31st, 1897, would be $239,543.08?

A. Yes, sir.

Q. Now, you would include in that the cost of the contract work you are commencing?

A. Not at all; that is simply what we have regarded as strictly operating expenses; that would be just the ordinary running expenses of the yards; it is a trifle more for the seven months than for the five months because we always have to have an increased force along in the latter part of the season, in September, and from that time on on account of the large increase of business that comes in those months, but it is pretty nearly the same per month as for the first five months, the exact figures of which we already have.

Q. Your estimate for the whole year is $518,343.44?

A. Yes, sir.

Q. For 1897?

A. Yes, sir.

Q. Now, at the close of the year you will have $75,000 worth of new paving, $19,000 worth of new viaducts, and $17,000 worth of new tunnels?

A. Yes, sir; that amount of flooring, the same length of viaducts, and the same length of tunnels that we have now will have been reconstructed.

Q. It will be new?

A. It will be new, but it will be built on the same ground where it is now.

761 Q. In this estimate, Colonel Morse, do you estimate any reductions whatever in your operating expenses—that is, any decrease in the salaries of officers, or wages of men, or saving in the cost of material, or anything of that sort?

A. No, sir; these estimates are made on the basis of the salaries, wages, and expenses that have been in effect prior to May 31st.

Q. Are the estimated expenses of operation for 1897 based upon the business of 1896?

A. It is based on the five months of 1897 from January 1st to May 31st. There has been a small increase during these months, but the expenses as a matter of fact are practically the same as they were in 1896, but I do not refer to 1896 in making the estimate for the remaining seven months of 1897, but, as I say, I take the first five months of the year.

Q. Wouldn't your expenses be affected by the increase or decrease of business?

A. Not very much.

Q. Say there would be a falling off of one-half in the business—in the number of hogs, cattle, and like that come to you—wouldn't there be a good deal of diminution of expenses for labor, repairs, etc.?

A. There would be a considerable reduction, as a matter of course, if the business were cut in two, but it would not be quite as great a reduction, relatively, as the reduction in the business, because we would have to have the same plant to take care of; we would have too much plant for that amount of business.

Q. Do you know a man by the name of Cotting?

A. Yes; I know two or three gentlemen by that name.

Q. Do you know Charles U. Cotting?

A. Yes, sir; I know him very well.

Q. Where is his home?

A. He lives in Boston, or right out of the city.

Q. Has he ever been here?

A. Yes, sir.

Q. When was he here?

A. I haven't seen him for a number of years. I don't know whether he has been here since along about 1887 or 1888 or 1889 or not; it is a number of years back.

Q. When did he become a stockholder in the Kansas City Stock Yards Company?

A. I am not absolutely sure, but my impression is within the last ten or twelve years.

762 Q. As far back as that?

A. I think so; I would not be positive about it; but it has been a number of years, I know.

Q. Do you know a man by the name of Francis Lee Higginson?

A. Yes; I know him very well.

Q. Where does Higginson live?

A. In Boston.

Q. Has he ever been out here, to your knowledge?

A. Yes; very often; I think he was here last year.

Q. About what time last year?
A. I think in the fall of the year.
Q. How long has he been a stockholder in the Kansas City Stock Yards Company?
A. I should say, certainly ten years, and possibly more than that.
Q. Do you know if these men have bought their stock at different times or whether they bought it all at one time?
A. I think they bought it at different times.
Q. How long do you understand Cotting has had 250 shares?
A. I think as much as ten years.
Q. And how long has Higginson owned 296 shares?
A. Fully ten years.
Q. Did you have any conversation with Mr. Cotting prior to the bringing of this suit?
A. No, sir; I had no conversation with him.
Q. Did you have any conversation with Mr. Higginson before the second suit was brought?
A. No, sir.
Q. Did you have any correspondence with Mr. Cotting before the suit was commenced?
A. No, sir.

Questions by Mr. BOYLE:

Q. This new viaduct that you are speaking of takes the place of the one that is now down there, does it not?
A. Yes, sir.
Q. The one that is there now is to be torn down and you are to build a new one?
A. Yes, sir.
Q. You understand the one that is there now has been given in as part of the value of the superstructures upon that land?
A. Yes, sir.
Q. Now, this tunnel that you spoke of, where is that to be constructed?
A. The tunnels are there, two of them, underneath the Union Pacific and Missouri Pacific tracks. The company has repaired them from time to time as long as it could do it, and now it does not seem to be worth while to try to repair them any longer, so we will rebuild them.
763
Q. Those tunnels have always been counted in the estimate of the value of the improvements?
A. Yes, sir.
Q. You are going to tear them out?
A. Yes, sir; and make them good.

And in answer to redirect interrogatories propounded to him by D. R. Hite, counsel for the complainants, the witness testified as follows, to wit:

Q. Mr. Morse, has Mr. Cotting or Mr. Morse an agent or representative here?

A. I don't know as I understand your question.

Q. Have they an agent here who looks after their affairs?

A. I do not know that they have. They have various affairs, and they have had from time to time different people to represent them in connection with their various business; but I do not know what their arrangements are with respect to agency.

Q. Colonel Morse, calling your attention to the valuations which you have placed upon the different tracts designated by the letters A, B, C, D, and E on the map used by the several witnesses, please state to the special master whether in making the estimates which you did make you had in mind the value of the land assembled together as a completed structure or system of stock yards.

A. I had in mind the value of the land for our purposes, of course. I think I said it was the value on account of the business done there, and all the value that came from the surrounding property.

Q. Now, with reference to the use which the stock yards company makes of the land considered as an entirety and as a completed structure and an assembling of all the parts, is any part of the land more valuable than a neighboring part?

A. I think that every foot of the land in the main yards is equally valuable. There is where the main business of the company is done. I think in the other parts of the yards the land is less valuable; but each part in any particular tract is as valuable as any other part in it, so long as it is used for the stock-yards business.

761 (Here Colonel Morse gave way for a brief time to Mr. Tuttle, but for convenience the testimony of Colonel Morse is set forth consecutively, and that of Mr. Tuttle follows.—Reporter.)

Q. With reference to the value of the system of stock yards operated by the Kansas City Stock Yards Company, what elements, in your opinion, measure the value of the completed plant as a going concern, including the tangible and the intangible property, say prior to March 12th, 1897?

A. The plant itself, consisting of lands and improvements, all the facilities for doing a large stock-yards business, the business which existed there at that time, which was represented by the stock of all kinds coming there daily, and the consequent earnings made from those receipts of stock.

Q. What, in your opinion, would have been the selling price of the property, considered as a whole, as a unit, and a going concern, about that time?

Question objected to and withdrawn.

Q. What, in your judgment, would have been the proper method of measuring the selling price of that property, considered as a unit and a going concern, at that time?

Question objected to as mere speculation. Objection overruled.

A. I should measure the selling price of it at what it could be

bought for in the market from the owners of the property, and should get at that by the value that the stock had on the marke and as testified to already—the average value which existed in th year 1896, viz., $136 a share. I should regard that as the mos direct way of getting at the selling value of the property an business.

Q. To get at the price which the market was willing to pay fo the stock, would the price represented by the measurement whic you have just applied embrace and include the tangible property which has been described here in testimony, as well as that whic we have designated here as the good will?

A. It would represent everything which entered into the valu of the property as an element of value, tangible or intangible, a represented by the stock.

765 Q. You said something before the adjournment, Colone Morse, with reference to the value which you placed upo various tracts of land considered as real estate for stock-yards pur poses. Will you please explain what you meant by that answer

A. What I intended by that was if I were buying a piece o property for the stock yards such as there is there now that that i what I would consider would be its value for a railroad yard, wher it would be used as a whole property in a large area situated a that is.

Q. Did you have reference in your answer to the tangible prop erty alone?

A. I had reference only to the land; that is the way I understoo the question.

Q. You had no reference to the structures or to any intangibl property with reference to which testimony has been alread given?

A. I understood the question referred to the land only.

Q. The special master asked you some question in the course o your cross-examination with reference to whether or not you in cluded in the prices you have put upon these various tracts th good will. I did not exactly understand your answer; there ha been some discussion about it. Will you please state to the specia master whether or not you included in the prices which you pu upon these lands per acre any property that the company may ow in the shape of good will?

A. No, sir; I did not include anything except the value of th land.

Q. In your cross-examination you gave some testimony respectin the lands which had been charged as cost of maintenance of plan in the years from 1892 to 1896, inclusive. Please state to the cour whether that was all that was charged in that account for thos years.

A. Charged to construction account?

Q. Yes.

A. No, sir; it was only a part.

Q. Now, with reference to the matter of operating expenses an maintenance. Please state to the special master what has been don

with all the earnings of the company since 1884, excluding the amount which has been paid as cash dividends and the amount now on hand as surplus.

A. It has all been expended, with the exception of what remains on hand as surplus, in operating expenses and construction,
766 which includes, of course, the amounts in the maintenance, as well as land and other expenses.

Q. Then, I understand from your answer, Colonel Morse, that by construction account you mean this item that you have testified to this morning about the cost of maintenance. Is that *when* you mean by charges to construction account?

Question objected to as leading and withdrawn.

Q. What do you mean by that, Colonel Morse?

A. Just give me the whole question, will you?

Q. You said that the amount which had been received for earnings had been expended for cash dividends. I asked you what had become of the remainder and you said it had been paid out for operating expenses and had gone into construction account.

A. That is right.

Q. Will you please state what you mean by going into construction account?

A. I mean that it has been paid out for items which have been charged to construction, consisting of renewals and improvements, and possibly in some cases there may have been land paid for from the earnings, but everything that has been earned has been expended on the plant.

Q. Have you put into the figures which you gave to the court yesterday and which you again testified about this morning as charges to construction account any sums that were paid out for land?

A. Not in these items here; no, sir.

Q. Were all of the moneys which you have testified about in the matters that were before you this morning with reference to the cost of operation and cost of maintenance expended for those purposes?

A. Yes.

Q. You were asked something about the capitalization of earnings that were expended for construction or cost of maintenance in certain years. Were they capitalized in 1896?

A. No, sir; they were not.

Q. Can they ever be capitalized in the future?

A. No, sir.

767 And in answer to further cross-interrogatories propounded to him by Mr. Boyle the witness testified as follows, to wit:

Q. Why can't they be?

A. Because the company has no longer capital stock to be represented in that way.

Q. You have been increasing your capital stock for a number of years. Don't you intend to increase it any more?

A. No, sir; the present company has no power to increase it.

Q. Why?

A. Because the laws of Kansas do not provide that it may do so.

Q. Is that the reason you have reorganized three different times?

A. You mean that we have increased the capital?

Q. Yes. When you increased your capital stock and reorganized was it because the laws of Kansas would not permit you to increase it without reorganization?

A. The laws of Kansas permit us to increase our capital stock three times. The original capital was as I stated in my former testimony. The capitalization at the present time represents the value of our plant, and, in our judgment, we have reached very nearly the maximum business; so there is no further occasion to increase or reorganize the company.

Q. If you were to increase your capital stock, you would have to reorganize, would you not?

A. That would be the only way.

Q. That is the way you did it in the past, is it not?

A. Yes; that is the way.

Q. What are the elements that have gone to make up these great land values down there in your stock yards; what are the elements that have gone to make them up?

A. The fact of its being the central part of a great city, where there is only a very limited amount of land that can be utilized in this way in large tracts, and the fact, as shown by experience in the last ten or twelve years, this land is being very rapidly acquired by railroads and for other similar purposes; that the amount now remaining is very limited in quantity and is being held, as we know, at very high prices. The city has surrounded the land in such a way that it has made it very valuable.

768 Q. Is there anything else? Does the fact that any of these institutions have located down there increase the value of those lands?

A. Yes, sir; all of the business of every kind tends to increase the value there.

Q. Does the location of the packing-houses tend to increase the value of the land?

A. Yes, sir.

Q. Does the location of side tracks and railroad yards about *about* the stock yards tend to increase the value of that land?

A. As being part of a railroad system, it does.

Q. Then, as I understand you, the establishment of those different classes of business down there—the large packing-houses, the railroad yards, the wholesale houses and manufacturing institutions, and all those things—go to increase the value of the land down there?

A. Yes, sir; everything connected with Kansas City goes to increase the value of them.

Q. Now, what are the elements that enter into what you call the good will? Specify the elements that enter into the good will.

A. The connections of the stock yards with the entire railroad

system, the fact that the packing-houses are connected with the stock-yards property, and the fact that there are buyers here from every——

Q. Stop right there. What proportion of the value of the good will do you attribute to the packing-houses?

A. I could not figure it out; I don't believe any one could. It is too complicated a question for any one to know just how much each one contributes to make up the whole.

Q. Go ahead and finish your answer.

A. I was going to add to what I have said that the connection that has been established with the country, with the most remote parts of it, that makes each stockman in every part of the country have this knowledge of this market and causes him to bring his stock here. It is a worked-up business which has created a market. All of these elements have made a market that draws stock from the whole country and made it an advantage to the owner of stock to bring it here and for the buyer of stock to come here. All of these things contribute to the making of the good will.

Q. And incidentally it is somewhat to the advantage of the stock yards company that they should come here, is it not?

A. Certainly.

769 Q. You say that all of these elements together make up the good will of the stock yards?

A. Yes, sir.

Q. Now, how do you arrive at the value of two millions of dollars?

A. I don't know that I can make it any clearer than I did in the answer to the hypothetical question this morning.

Q. I wish you would try, Colonel; it is not very clear to me.

A. I said, I think, that given that dead plant, with other conditions the same as to country, that I thought it would take fully two millions of dollars, and it might take a great deal more, to bring the buyers here, to bring the packing-houses here, to communicate with every part of the country where there is stock, and to make it clear to such places and to such people that a market would be here if they would come here with their stock.

Q. Then, if I understand you, your good will is what it would cost to bring about the things which you have brought about; isn't that your ultimate conclusion, Colonel?

A. It would be what the establishment of the business would cost.

Q. That is the way you arrive at it; it is what it would cost to build up the business here; you say it would cost you two million dollars, or three, to bring about the conditions which now exist here?

A. Yes.

Q. Then I say your good will is worth what it would cost to bring about these conditions; isn't that true?

A. Yes; I have just explained, as I understand the question, it would mean that if you had that dead plant there today and had never had a head of stock in it that the difference between the cost

of that plant and the value of the plant after you had brought about the conditions that exist there today would be the good will—that is, bringing the packing-houses here, sending men out on the road, advertising in the newspapers, advertising to the world that this was a good market; that would cost two millions of dollars.

Q. This good will is worth just what it would cost to bring about these conditions here, which is two millions of dollars; is not that true?

A. I suppose that is the fact.

Q. In reply to a question by Mr. Hite you say that this property down there is worth the amount of money that you have
770 placed upon it, five millions and odd dollars for the real estate, independent of the good will, independent of the superstructures, and everything of that kind for any purpose that it might be used for. Is that your answer?

A. With all conditions in the city as they are.

Q. In other words, if the stock yards were wiped right off of the face of the earth that land would be worth that much for railroad facilities?

A. You have got to assume more than that; in all the questions which I have answered as to the value of the land it has been with every other condition just as it is, but by some process the stock yards is taken out, and that land is left there just as it is with respect to railroads, packing-houses, and everything else; then what is the value of the land? That is the way I understood the question, and that is the way I now make answer.

Q. You think if there was 160 acres of vacant land down there surrounded as this land is surrounded, owned by one or more persons, unoccupied, and on the market for sale, one acre—each acre competing with the other for advantage, that it would be worth in the neighborhood of six million of dollars on the market?

A. Yes; I think that a company could be organized to take the property on that basis.

Q. That opinion is a little speculative, is it not, Colonel?

A. I think it might be, but I think if you would blot out the stock yards, leaving all the other conditions just the same as now, there would be a demand for stock yards which would warrant the payment of those prices.

Q. Would a new company put it there at that amount of money?

A. They would if you left all the conditions just as they are there now.

Q. Would they put six millions of dollars into 156 acres of land right there when they could get the same conditions as you got them for $775,000, which you have expended in the past in getting the packing-houses to establish there; would they spend six millions of dollars when they could get other land for much lower prices?

A. They would not have these conditions, because you are assuming that everything else is there except the stock yards.

Q. It would be cheaper for you because you would not have to pay it?

771 A. That would be for the persons ow-ing the property. You would buy it just as cheaply as you could, but you would have to pay what the persons owning the property under those circumstances would think they could get out of it.

Q. In this six million dollars at which you value this land has entered all of this money which you have paid to these different institutions there, or either you didn't have to pay that much money out?

A. If you were the owner of that land and you know it is of that value, if I am buying it, I would have to pay that price to get it.

Q. You would come along and as a good business man and pay six millions of dollars for those stock yards?

A. Yes, sir; I should if those conditions were there.

Q. The business would have to be built up. You would get for your raw land, without any business established upon it, six millions of dollars, would you?

A. You haven't got the conditions of raw land exactly.

Q. It is not plow land exactly, but it is just ordinary vacant land—ordinary dirt?

A. It is just the same proposition, in my judgment, as if you should take the block of land between 9th and 12th streets on Main street and wipe out every building on it, and then ask me what that land would be worth with the buildings and everything else wiped right off of the land, but with the city left about it just as it is, with the prospect of business which we regard as being possessed by the city.

Q. I do not think the condition is the same, because that is a proper location, the only location possible for a drug store, grocery store, or dry-goods store, but this is not the only location for a stock yards, because you yourselves at one time purchased land which, in your judgment, was available for stock-yards purposes, with the idea of removing your plant to it.

A. I do not think that is quite the situation that you are giving. You are giving the situation of this 160 acres of land lying there surrounded by every one of these railroad connections, by every one of these packing-houses, all equipped with the men that are necessary in the operation of them, living right close by—

772 everything exactly as it is; but by some process the stock yards is not in operation there. There are no stock yards there. That is the proposition. Then some—comes along to buy that property. What will you pay for the land? says the owner. Here is every appliance that you need to make stock yards complete as soon as you have built your yards and put the other things on the land. Then he would figure what he could afford to pay for the land, and after buying it and building his yards and improvements he would go to work to create a business the same as the stock yards company has created its business.

Q. But he wouldn't give six millions of dollars for the land, would he?

A. There has been a great deal of imagination drawn into this business as to what would happen if something were very different

than it is, and it is no more easy for me to say what I would do under certain different conditions than anybody else, but I can only give the best judgment I have in the matter.

Q. There has been a good deal of speculation and surmise in this whole matter, has there not, Colonel?

A. I do not know what others may have done. I have tried to confine myself to the facts.

Q. Your good will is very hard to pull right down so that you can get your hand on and analyse. It is imaginative in a measure, is it not?

A. No, sir; I think not. I think it is very plain business proposition.

Q. You gave your judgment as to the value of these superstructures in your former testimony as $1,400,000—in that neighborhood?

A. No; I think you confuse the figures. One set of figures was the amount which the improvements had cost. The other was the valuation placed upon the improvements by Major Drought.

Q. I know, but when, at the very beginning of this inquiry, you were asked by Judge Horton as to the value of your improvements, you said they were worth $1,400,000 in round numbers, and I think your testimony will bear me out in that proposition.

A. The figures to which I testified as to the value of the improvements were $1,593,038.07.

Q. When did you testify to that?

A. I think it was on one occasion when I was on the stand and when other figures came in.

773 Q. Where do these figures $1,400,000 come in?

A. I was asked if I was familiar with the cost of the original improvements, and I gave the cost of the original buildings and improvements as $1,460,763.33, and immediately following that I said they were worth more than the cost represented in our accounts, because in rebuilding them from time to time they were rebuilt on a larger and better scale than they were originally; that Major Drought's figures were $1,593,038.07. I think that is where the two sets of figures come in.

Q. Have you made this estimate upon what Major Drought has said the improvements are worth?

A. Yes, sir; that is a very carefully prepared schedule of the whole property.

Q. You did not prepare the schedule and you don't know anything, as a matter of fact, as to the value of the improvements, do you?

A. I know what has been paid out.

Q. I know, but you are drawing a distinction between what they are worth and what they cost. You are not prepared to testify to the present value of the superstructures, of your own knowledge, are you?

A. I think my testimony was that I took the estimate of Major Drought. I did not say that I knew anything more than that he

was familiar with the value of the structures and had prepared an estimate and schedule which was handed to me.

Q. And that is the only information you have?

A. That is the only information I have as to the present value except, as I stated, that I knew what the books show as to the actual cost of the improvements.

Questions by the MASTER:

Q. You testified as to the value of the real estate with all the other conditions down there exactly as they are, except that the stock yards, buildings, and improvements were not on the ground and there was no stock yards company in operation; you took those things into consideration in estimating the value of the real estate?

A. Yes.

Q. Now, I have not yet been able to discover any testimony upon which I could form a conclusion or base a judgment as to
774 how you estimate the value of the business of the stock yards company on the 12th day of last March.

A. There would be another way, I think, of arriving at that. Assuming that instead of this land and property being located just as it is, surrounded by valuab e real estate, by a large city, that it was in another location where the surrounding land was only worth one hundred dollars an acre, but that there was a business there which, done in the usual way of stock yards and on the same rates as are charged by stock yards in other places, had brought about an earning capacity which made a return on the given capital, that the property was capitalized at a given figure, and that its stock had a market value, I think that there the business, as it represented that return on the amount of the capitalization, would be one way of getting at the value of the business.

Q. Is that the way in which you estimate this sum of two millions of dollars?

A. I do not estimate it in just that way, for the reason that those circumstances are different in certain respects, from the fact that the property would have in this case — the real estate would intrinsically have a great value, while in the other case you might be doing an equally large business, if such a thing were possible, in a remote place instead of in a large city, where a business might be done so as to return as large a per centum on an equal capital and still the difference would be very great in the value of the tangible property.

Q. I think I see now about what your idea is, but I understood you that in estimating this value of two millions of dollars you would take into consideration the amount that it would cost to bring about these conditions, but that would be the cost of locating those plants down there.

A. Now, I should say that in that case which I have assumed, you have got a natural location, geographically and locally, in every respect, so far as railroads are concerned, that is almost a perfect one, and in going to work to create your business it would be a very

different thing than if you were starting in some remote locality and had to bring about a great many conditions which are given as existing; that it would not cost anything like the amount to create a business that had many of these conditions already provided as it would where you had nothing of the kind, but that it would
775 cost something, and it is represented in what we explain as good will; but if you took the other view of it, and assumed that we had a want for a stock yards here and that we had to pay these amounts for these lands and improvements and then we didn't do a thing to create a business, I claim that the plant would be worth more than two million dollars less than it would be worth if you had brought about the conditions which now exist, and to bring about which would require an expenditure of more than two millions of dollars.

Q. But if, in estimating the value of the real estate—if you take into consideration, in the estimating the value of the business, the cost that you have been to in getting those plants located down there, in estimating the value of the real estate, you ought to leave those plants entirely out of consideration, ought you not?

A. That might be one way of looking at it, but if you leave the plants out you have got to leave the population of the city out, and you have got to consider everything on a different plan.

Q. And consequently your real estate would be worth a very much less figure, and your business would be worth a correspondingly larger figure?

A. That is just it; if you start on that basis without any of these things, then you would expend in creating that business value fully the difference between the value of the real estate on that new basis and what it would be if all those things were there.

Q. But if you take into consideration, in estimating the value of the real estate, the cost that you have incurred in locating those plants there, and then when you estimate the value of your business you also take into consideration the amount that you have expended to get those plants located there, then you double up on that?

A. Yes; if you assume the conditions to be that way.

Q. What I want to get at is the actual value belonging to this business in order that I may make an intelligent report as to the value of the business entirely distri-ct and separate from the real estate and improvements.

776 And in answer to further direct interrogatories propounded to him by Judge Horton, counsel for the complainants, the witness testified as follows, to wit:

Q. You have spoken about the cost of getting these various things there?

A. Yes, sir.

Q. Do you mean to tell the master that those are not worth more than the mere cost of getting them there?

A. I have tried to make that clear that value is a very different thing from cost; if we were going to make an investment of five

hundred thousand dollars, or whatever it might be, with the expectation of getting six per cent. on the investment, for the purpose of increasing the revenues of the company, we might just as well take that amount of money and put it into something that would make that return of six per cent., but, as we look at it, these amounts which we have expended constitute an investment on which there has been a great return to the company; it is their location here which has made it possible for the company to build up a large and profitable business; if it were simply a question of placing that $775,000 where it would yield a return of six per cent. per annum, there would not have been any inducement at all in investing it, but it is the fact that from the money so invested in putting the packing-houses here the company is getting a return a great many fold that makes the investment so valuable.

Q. Suppose that this ground now occupied by the stock yards was surrounded with all the conditions which exist there to-day, packing-houses, railroads, and everything else just as they are today, and new stock yards were put there for the first time, with all these connections and surroundings just as they are today, then state whether or not, in your opinion, that business would have the same value and the same good will as one which had been established, say, since 1884 and carried on successfully since that time.

A. It would not, because you would still have to make it known to the men who buy and sell stock that there were facilities at Kansas City for doing a live-stock business, and that they could come there and do business with advantage equal to that at other and established markets.

777 By the MASTER: Is not the difference between the two plants, the one that the judge suggested and the one which you now have—is not the difference between the two plants the value of your business on the 12th day of last March?

A. I think the difference between the value of the two plants would be that one would be without any business on it and the other with the business which had been created on it, and the property would represent that value.

By the MASTER: That is the way I understood it. Now, what I want to find out is on what you base your estimate of the value of one over the other. One of them is worth two million dollars more than the other one, as I understand your testimony now. Now, how do you estimate it at two million dollars instead of three million or one million dollars?

By Mr. HITE: The answer he gave me was that he measured it by the market value of the stock, the market value of the stock as representing what all the stockholders would be willing to sell the property for, and that would be somewhere in the neighborhood of ten millions of dollars at $136 per share.

By Mr. BOYLE: And when you take this increased premium on the stock and put it on top of the two millions of dollars, then you again double up.

By Mr. HITE: We haven't done that. He said that included the good will and every kind of property that the company owned.

By the MASTER: I see the point. I did not catch that answer that the Colonel had given to Mr. Hite. If that is true, then on the 12th day of last March the market value of the stock which had been issued by the company was $136 per share of $100.

A. I think that would have been true—possibly not on the 12th of March, but at any time for 12 months before the 12th of February. There were no sales that I know of from February 1st to March 12th. For 12 months prior to February 1st it ranged from 135 to 140, and I don't believe the stock could have been bought as an entirety for less than that, and, according to the usual experience in such cases, it would have cost more. That no one would have sold any considerable amount for less than $136 I feel absolutely sure.

778 Q. You think the entire stock could have been sold at that rate at that time?

A. Yes, sir.

Q. And the entire plant could have been sold at that time for in the neighborhood of nine and a half millions?

A. Yes, sir. I will give you an instance why I think that is so: A year or so before that time there was an effort made by parties who claimed to represent a foreign syndicate, who came here and made a careful investigation of the plant, of its capacity, and the amount of business it was doing, and those gentlemen who were going to take charge were going to recommend the purchase of the plant at that time at $125 a share, as the price they could get the syndicate to pay. That was suggested, and I know of a great many stockholders who did not listen to it at all; so I gather from that that $125 a share would not have tempted them at all.

By Mr. BOYLE: What makes premium on stock?

A. The value that is supposed to be in the property.

Q. The earning capacity of the property?

A. That has a great deal to do with it; yes, sir.

Q. It is the amount of dividends that the stock will earn?

A. It is the ability to earn a fair and steady return.

Q. What makes your earnings—the charges which you made, is it not?

A. Yes.

Q. You said a moment ago that in paying out those amounts for packing-houses that if you had only expected to get six per cent. return on the investment it would have been no inducement to make the outlays. Don't you consider that six per cent. is a fair return on an investment?

A. Yes; but investors usually look for and expect a much larger return from enterprises usually known as industrial enterprises than when they are buying into an established business. So I mean if you were starting a new stock yards you wouldn't get a great many subscribers if they knew they were going to put in their money and get only 6 per cent. return.

Q. So you people in the stock yards expect a greater return than six per cent.?

A. I mean that when an enterprise is new and entirely un-
779 developed it is undoubtedly expected to make more than six per cent. on the original investment.

Q. You have, haven't you?

A. Yes, sir; but when the property becomes established and people are buying and selling the stock on the market, then six and even less per cent. is regarded as desirable.

Q. Still you do make a great deal more than six per cent. on the original investment—on the original investment in 1871?

A. Yes, sir.

By Mr. HITE: You spoke about not being able to say about the selling price of the company's stock just prior to the 12th of March. Will you please state to the special master any reasons which you have for that statement, what were the conditions, if any, which existed at that time which had a tendency to make the stock fluctuate at that time?

A. The uncertainty as to what might be the effect of legislation fixing the rates if they were enforced; that naturally made people feel a little uncertain as to what the value of the property would be.

Q. Was there any difference in the physical condition of the Kansas City stock yards on the first of January, 1897, and on the 12th of March, 1897?

A. There was no material difference.

Q. Was there anything in the business and property itself essential to its development that had changed so as to have any effect upon the selling price of the stock?

A. No, sir.

By Mr. BOYLE: You say that the people upon the stock market who buy and sell stock of this character felt that legislation might affect the value of this stock somewhat?

A. Yes, sir.

Q. They had a little more regard for the mandate of the legislature than you people, did they, Colonel?

A. People are always sensitive about anything which they think can affect the earnings of the property.

Witness excused.

780 Morning session.

9 O'CLOCK A. M., FRIDAY, *May 7th*, 1897.

Parties present as before.

The taking of testimony on behalf of the complainants resumed.

EUGENE RUST, a witness produced by the complainants, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to direct interrogatories propounded to — by Judge Horton, counsel for the complainants, testified as follows, to wit:

Q. Give your name, age, and residence.

A. Eugene Rust; age, 45; Kansas City, Missouri.

Q. In what business are you now engaged?

A. General superintendent of the Kansas City Stock Yards Company.

Q. How long have you held that position?

A. Since 1893.

Q. What are the general duties of your position?

A. I have general supervision over the work and have the general direction of all employés.

Q. How many divisions are there, if there are divisions, of the stock yards, so far as the laboring classes are concerned?

A. Three general divisions of the yards.

Q. What are those divisions?

A. The main division, the north division, and the west or southern division.

Q. You are now speaking of divisions in the way of lands or tracts?

A. I am speaking of the divisions of the yards.

Q. In a general way, how many acres are there in the yards?

A. About one hundred and seventy.

Q. How much in Kansas and how much in Missouri?

A. About one-third in Missouri and two-thirds in Kansas.

Q. I intended to ask you, when speaking of divisions, whether there were any departments of labor. That is what I was asking about.

A. The business of the yards is systematized and is divided into divisions. They might be called the yard division that handles the live stock, the cleaning-up division that cleans up and keeps the yards in condition, and the carpenter division that looks
781 after the repairs, the horse and mule department. The labor of handling the stock is divided into a day and night force; the clerical force and the feeding division.

Q. State where the general offices of the yards company, together with the freight offices are located, so far as States are concerned.

A. They are located in the Live-stock Exchange building, part being in Kansas and part in Missouri.

Q. What do you mean—part of the freight offices being in Kansas and part in Missouri or the building part in Missouri and part in Kansas?

A. I refer to the building. The freight offices and general yard offices are all located in Missouri.

Q. How many railroads terminate in and adjacent to the Kansas City stock yards?

A. There are seventeen separate railroads that have terminals at the yards.

Q. There was something said about some quarantine grounds. Whereabouts are they located?

A. They are located west of the Kansas river.

Q. In what State?

A. In the State of Kansas.

Q. What roads terminate near or adjacent to those yards? About how many?

A. There are three railroads that terminate in the southern of quarantine yards, and all the roads entering the city have access to them over the tracks of these three roads.

Q. Do all the roads have terminals at the quarantine yards?

A. No; only three roads have terminals there.

Q. They also have terminals at the other yards?

A. Yes, sir.

Q. So that all of these roads that you referred to practically have terminals at the yards?

A. Yes, sir.

Q. Do you know the present capacity of the yards?

A. The capacity is for 22,000 cattle, 30,000 hogs, 15,000 sheep, and 4,000 horses and mules.

Q. When you speak of capacity what do you mean, daily, weekly, or monthly?

A. Daily capacity.

Q. How many separate cattle pens, if any, are there in the State of Missouri?

A. There are about 550 cattle pens.

Q. In the State of Missouri?

A. Yes, sir.

Q. How many hog pens?

A. There are none in Missouri.

Q. How many are there anywhere else?

782 A. There are 625 in the State of Kansas.

Q. Where are the sheep pens, and how many are there?

A. They are in the State of Kansas, to the number of 207.

Q. How many miles of alleys are there in these yards?

A. About nine miles.

Q. What is the length of viaducts?

A. About 1½ miles.

Q. Tell the master what is the purpose of those viaducts.

A. These viaducts are overhead stock drives that were built by the company for the purpose of expediting the business of the yards. The business is oftentimes very congested on the surface alleys, and in order to move the stock promptly the viaducts were built as a necessity.

Q. How are the cattle and various other pens which you referred to supplied with water?

A. Each pen has a water trough, hydrant, and is sewered.

Q. If you know or can refresh your recollection from memoranda, how many water hydrants have you in the yards?

A. There are about 1,900 water hydrants in the yards.

Q. How many miles of water mains?

A. There are nine miles.

Q. How many miles of sewers?

A. Nine miles.

Q. How many miles, if any, of railroad tracks are owned and maintained by your company within the yards?

A. About four miles.

Q. How many chutes or unloading places are there in the yards?

A. There are 411 chutes for unloading and loading stock.

Q. How many scales, if you recollect?

A. There are 14 sets of scales for weighing stock and two sets o track scales for weighing feed.

Q. Tell the master how many warehouses are in the State of Missouri where hay is stored.

A. You refer to the hay barns in the yards?

Q. In Missouri; yes.

A. There are four hay barns and two warehouses for storing hay and one crib for storing corn in Missouri.

Q. How many electric lights, if you recollect, are there in the yard?

A. There are 30 arc lights and about 1,200 incandescent lights used for lighting the yards.

Q. State generally in what condition all of these instrumentalities in the yards are kept and maintained.

783 A. Kept and maintained in the best possible physical condition; the repairs are kept up and the yards are kept clean at all times.

Q. State to the master when cattle are delivered by a railroad company or otherwise in the State of Kansas from the State of Kansas to the stock yards company in the State of Kansas what is then done with those cattle. I mean by your company.

A. They are unloaded from the cars into the chutes, and from there they are counted into the alley and driven to the pens.

Q. What I want to know is, who takes possession of the cars and orders and directs them when they are delivered to the stock yards company in Kansas—the State of Kansas?

A. The railroad companies deliver the stock to the stock yards company. As soon as the car is placed at our chutes our company takes possession of it, opens the car doors——

Q. (Interrupting.) What amount of Kansas cattle, if any, is transported over the tracks to Missouri to the cattle yards and cattle pens in Missouri—cattle that come to the company in Kansas?

A. I would like to have that question explained.

Q. What proportion of the cattle that are received from—that originate in Kansas, if you can give it, are transported over your tracks under the control of your company to the pens or to railroads in Missouri?

A. It would be impossible to give the exact number.

Q. Then I will change it. What proportion of the cattle that are received—any cattle, wherever they may come from—are transported over the tracks and put into pens in Missouri?

A. About one-half.

Q. What is then done with the cattle? We will take, now, those that are taken by your company from Kansas into Missouri and put into pens. What disposition is then made of them?

A. They are sold; but first they are fed and watered, and if sold are taken to the scales and weighed, and returned to pens from which they are teken for shipment or driven from the yards.

Q. If not sold what is done with them?

A. They — either shipped or driven out of the yards.

Q. You spoke of weighing them. State whether or not cattle that are in the yards and charged yardage are weighed oftener than once.

A. Yes; very often they are weighed two, three, or more times.

784 Q. State whether or not any charges are made for those numerous weighings of identical cattle, except those included in the charge for yardage and feed.

A. No, sir; there are no other charges.

Q. Why are various weighings of the same stock necessary, or what causes various weighings?

A. They are often resold and are usually reweighed when they are resold. They often change hands two, three, or more times before leaving the yard.

Q. In the charge for yardage—state whether or not that includes simply a day or all the while the cattle are in the yard.

A. It includes all the time the cattle are in the yards regardless of the number of times they may be weighed.

Q. Or the number of days that they are there?

A. Yes.

Q. You spoke in your evidence of hay and feed. Let me ask you from whom is the order obtained to sell any feed?

A. From the owner or his agent.

Q. I mean from the yard. Who is the officer representing the yards company?

A. All orders for feed are given to the feedmaster of the stock yards company.

Q. Whereabouts is the feedmaster located—where is his office?

A. It is in the State of Missouri.

Q. Where is the feed paid for?

A. In Missouri.

Q. You stated that you had, as I understood it, control and supervision of the employés around the yards?

A. Yes, sir.

Q. How many are there?

A. Our force varies from day to day and from month to month owing to the volume of business.

Q. Well, you can state generally what it is.

A. About 346 on an average.

Q. State what wages is paid for their services, whether high or low.

A. The wages of the yard employés vary from $25.00 to $60.00 a month; of yardmen, from $60.00 to $150.00, and yard officers; from $1.75 to $3.50 for laborers and carpenters.

Q. You are speaking by the day now?

A. Yes; per day. The figures I gave first for the yard officers were by the month.

Q. What employés, if any, receive $25.00 a month?

A. Well, they are known as gate boys—scalemen.

785 Q. Are they very numerous; aren't they mostly boys?

A. There are about ten or twelve whose wages would be $25.00 to $35.00 a month; the others run from $35.00 to $50.00.

Q. State whether or not in your employment of these laborers, these employés, you intend to obtain good and efficient persons to perform that labor.

A. We employ the very best men we can obtain for those prices.

Q. How do those wages compare generally with the wages for that kind of service?

A. They are higher, generally, and better wages than are paid in any other line of business of that character.

Q. Why is that done?

A. Well, because we are obliged to employ the very best of help for the reason our business is complicated; we are obliged to depend on our employés for their judgment; we are obliged to have sober, steady men that we can rely upon and who have sufficient intelligence to master the business.

Q. Are there any employés connected with the yards who solicit or obtain business for the yards?

A. There are traveling men employed by the yard company.

Q. What are their duties?

A. To solicit business.

Q. In what States?

A. In all the territory tributary to this market; they visit the ranchmen, represent the advantages of the market; they keep in touch with the railroads and railroad men in regard to train service, rates, and everything of that nature.

Q. Do you know how many of that class of employés there are?

A. At the present time we have three men employed in that work entirely.

Q. Generally, how many do you have?

A. It varies from three to five men.

Q. Do you know what their wages are—their compensation by the month or day? If you don't know we will prove it by others.

A. No; I don't.

Q. In giving your statement about these wages that you have given to the master, state whether or not, for the particular classes of employés, those wages are excessive in any way for that particular work.

A. I do not consider them so; the wages are no more than are fair and just, and that the men fully earn.

Q. You have spoken about cattle coming to Kansas and
786 being transported to Missouri; state whether or not any cattle or stock of any kind is received in Missouri and taken from there into Kansas; and, if so, what particular stock is taken in that way.

A. I can only answer that question in a general way; all the railroads having terminals at our yards come into the yards from Missouri side of the line with the exception of three.

Q. Well, that would be fourteen roads?

A. There are seventeen.

Q. Fourteen in Missouri?

A. All with the exception of the Missouri Pacific, the Union Pacific, and the Wyandotte & Northwestern.

Q. Then all the stock delivered by these railroad companies in Missouri either remains in Missouri or is taken to Kansas?

A. Yes, sir; they are unloaded indiscriminately either in one State or the other.

Q. State how, in a general way, these yards are conducted; you have mentioned the divisions; whether each division is conducted separately or how.

A. In each of the three divisions a force of men is maintained at all times, day and night and on Sundays, to receive and unload all stock delivered to the company, and in each of the divisions the yards are arranged with sufficient pens, scale facilities, and feed-barns for the hand-ing of the stock received in that division.

Q. In that connection, right here, are those divisions affected by the State line in any way or do they run across the State line?

A. They are not affected in any way by the State line.

Q. Are the whole yards carried on as one yard or as separate yards?

A. They are all conducted as one yard; of course, it is simply divided for the convenience of the business; they are all connected and are all used in common. The stock is taken from one division to the other with the exception of the southern division, which is exclusively for the handling of southern cattle.

Q. What do you mean by southern cattle?

A. Cattle that are excluded from——

Q. What general name do they have?

A. They are cattle that originate below a line established by the United States Government and are quarantined cattle.

Q. That is what I want. In regard to these particular
787 cattle, the manner in which they are taken care of, the pens cleaned, etc. Under whose orders and directions does your company act?

A. Under the orders and directions of the Department of Agriculture.

Q. Who is the representative here?

A. Mr. Albert Dean is the live-stock agent of the Department of Agriculture in charge of the transportation of live stock.

Q. *On* what Government?

A. The United States Government, Department of Agriculture, Bureau of Animal Industry.

Q. State whether or not, in obeying the inspector's orders and directions, you are at any additional expense different from that of the general yards.

A. Yes; we are obliged to maintain a separate force for the handling of stock received in those yards.

Q. Does it make it any more expensive or not?

A. It does.

Q. In the care of pens; is there any expense about that different from the others?

A. You refer to the southern yards?

Q. Yes; I am speaking of the quarantine grounds now.

A. They have to be disinfected and cared for under the instructions of Mr. Dean.

Q. State whether or not all the charges and expenses of carrying on the yards and caring for these cattle are included in the charge for yardage and the prices for feed.

A. Yes, sir.

Q. You have spoken about the receipt of cattle. Now, state whether or not there has to be any papers executed or records kept about the receiving of cattle.

A. A complete record is kept and preserved of each lot of stock received by the yard company. I have here two sets of these records from our cattle transactions.

Q. Describe the first set and then turn the papers over to the attorney general.

A. The first set refers to a single car-load of cattle that was received by the yard company on April 29th.

Q. What papers were made out? Go through them consecutively; we want to show what is done with the cattle.

A. The first is the bill that is delivered with the stock by the railroad company—in this case by the M., K., & T. Railway Company to the stock yards company.

Q. That we may understand it, are you speaking now of a whole train or just a single car-load?

A. One single car-load.

Q. Now, before we go further. Does every car-load go
788 through the same course?

A. Yes; in a general way it does.

Q. Go on with the one car-load and state what has to be done in the way of records and papers.

A. This bill delivered by the railroad company recites the consignor, the consignee, the class of stock, its place of origin and destination, car number, freight and other charges due to the railroad company.

Q. Now, who is that delivered to?

A. To the stock yards company.

Q. What is then done; what is the next step?

A. This bill is checked with the car, showing the position of the car and the chute into which the stock is unloaded.

Q. Whose employés make out that bill that you are now reading?

A. The stock yards company's.

Q. What is the next paper?

A. I am not through with this. As soon as this stock is placed in the pen the block and pen is put on it; it goes to the yard officers, where it is registered and endorsed with the number of stock contained in the car; from there it is sent over to the general freight office of the company, where it is filed, and the amount of charges shown by it placed in a book.

Q. What charge do you speak of now?

A. The freight and other charges due the railroad company, and

becomes the basis on which the charges are paid and the amount remitted to the railroad company. I should say in this connection that the stock yards company acts as the agent for all the railroad companies delivering stock to it in the collection of their charges due up to the time the stock is turned over to the stock yards company. As soon as the bill is checked with the car it is taken to what is known as the train office of our company; the stock yards company's employés take the bill to the train office, where a memorandum is posted, showing the consignee, consignor, car number, railroad, date, and time of arrival, for the information of the public when the stock is counted from the chutes.

Q. You say posted; what do you mean by that?

A. In a public place in the train office. When the stock is counted from the chutes a check of the car is made by the employé counting the stock.

Q. When you speak of employés state whose employés they are.

A. The stock is counted from the chute by the stock yards
789 company's employés and the record made, showing the number of head, railroad, date, and the employé counting the stock from the chute. It is then driven from the chute by the stock yards company's employés to the pens and is counted into the pen by the stock-yard employés and a record made by the employé in charge of the pens. We have what is known as deliverymen, who have——

Q. One moment! Is that the evidence, the record made by the employé that you have there?

A. Yes, sir.

Q. I wish you would so speak of it as you go along.

A. This deliveryman also has a record showing the stock going into or leaving his division, together with the owner and the person to whom the stock is delivered. The next is the feed order given to the feedmaster, showing the amount of feed ordered by the owner of the stock and the firm or person ordering the same. The next is the record showing the delivery of such stock from the pen and to whom delivered. The next record is the record made in the general yard office of the yards, showing the date, railroad, time of arrival, consignor, State where shipment originates, car number and initials, consignee, block and pen where it is yarded, the number and class of stock, number of cripples, if any, tag number if crippled, number of dead, if any, and the number of the chute into which it is unloaded. This is a public record that is kept for the use of the public and is accessible at all times to them.

Q. When you speak of the public you include also shippers and owners of stock?

A. Everybody. The next record is the record of the scales, when the stock is sold, showing the date, seller, number and class of stock, buyer, weight, owner, block and pen it was from, and the block and pen to which it goes after being weighed; this record is made by the weighmaster employed by the stock yards company, and shows the official weight of the stock as well as the number of head. The weighmaster also makes a scale ticket for each lot, showing the

name of the seller, the name of the buyer, the name of the owner, the number and class, the weight, the date, the name of the weigh-master, block and pen from which the stock is taken, and the block and pen to which it goes. This ticket is used in making settlements between the seller and the buyer. The next record is the record made by the foreman of the yard company who counts
790 the stock off from the scales, showing the name of the buyer, the number and class of stock, block and pen in which it is placed, and the employé taking it from the scales. The next record is the ticket given to the employé taking the stock from the scales, which is delivered by him to the deliveryman in charge of the division to which the stock is taken. The next record is the record of the deliveryman, showing the owner, origin, block and pen, number, and the delivery of the stock—the person to whom it is delivered. The next record is the shipping order, in case the stock is shipped, as in this case where the stock was actually shipped, given by the owner to the stock yards company, showing the railroad to which the stock is to be delivered, the number of head, the block and pen where it is located and the number of cars needed into which it is to be loaded, the name of the person for whose account it is to be shipped, the name of the owner, signed by the owner, the date, and the destination. The next is the title order given by the consignee of the stock to the buyer, directing the stock yards company to deliver the stock to him, showing the number and for whose account and the date. The next is the shipping ticket, showing the railroad on which the stock is to be loaded, the date, number of train, the time that it is to be loaded, the number of the track on which it is to be loaded, the number of the order, the name of the person for whose account it is to be shipped, the block and pen where it is located, the number of head proper to be placed in each car, the number of the chute where it is to be loaded, and the car number; also the name of the employé loading the stock and the time at which the loading is completed. The next record is an account that is kept in the freight office—the stock yards company's freight office—showing the train number, the number of the order, the name of the person for whose account it is shipped, the name of the person who gives the order, the railroad over which it is to be transported, the number of cars, number of cattle. The next is a memorandum ticket showing the name of the railroad, number of cars of cattle, name of person giving the order, and the name for whose account the cattle are shipped and the number of head. The next is the record kept by the stock yards company with the Chicago & Alton Railway Company, showing the date, consignee, consignor of the stock, the number of cars.

791 Q. In that record you speak of the Alton road; you mean in that case it was that road; in any case it is the company that takes the stock?

A. We keep an account with every road; this happens in this particular case to be the Chicago & Alton road. The next is a blank form of receipt that is furnished the public, in case they demand it, showing the date, number of the freight bill, the car num-

ber, for whose account, amount of freight, number of cars, and the amount of freight collected.

Q. When you speak of the public you mean those who are interested in these shipments or in getting information about them?

A. This is simply a duplicate to enable the consignor or consignee, in case there is any question about the amount of freight paid by him or due on the stock, so that he can use it if he sees fit. The next is the freight bill of the railroad company, showing the consignee, consignor, number of cars, class, amount of back charges, and local charges, if any, that are due on the stock to that company.

Q. Now, state how many records and different papers have to be made out as to every separate car-load of stock.

A. That varies according to the disposition that is made of the stock. In this case it took 21 separate papers and entries.

By the MASTER: I understand that this record that you have just mentioned applies to every car-load of stock that is unloaded at the stock yards and then reloaded for shipment to some foreign point?

A. Yes, sir; it applies to stock unloaded, fed, sold, and shipped to some other point.

Q. Now, have you got any list where it is not shipped to any other point—where it is disposed of here?

A. I have another case of two car-loads received on April 23d.

Q. What was their disposition?

A. They were sold in the yards, part of them, and taken to the packing-house.

Q. Before we pass the other set of papers, state, as to that list, whether or not every paper is needed in the case of an absolute sale at the yards excepting those papers making the reshipment?

A. They are absolutely necessary, so that the yard company may preserve the chain of title and the owner or shipper may know of the movement of the stock while in the yards.

792 Q. State whether or not those records are consulted or examined or information obtained from them by shippers or owners of stock.

A. Yes; accessible at all times to the public.

Q. But are they used; do they use them?

A. Yes, sir.

Q. What is the purpose of keeping the record of the stock?

A. The purpose is to keep a record of all stock received by the stock yards company; those records are preserved and kept, so that they can be consulted at any time.

Q. Now, what is this other shipment you have?

A. This is a shipment of two car-loads of cattle received on April 23d, part of which were disposed of to different buyers.

Q. In what respect is this lot of papers and records different from those others?

A. In the other case submitted there was a single transaction; in this case it shows the stock as being sold in a number of different lots to different purchasers.

Q. State whether or not that gives you any additional trouble or expense.

A. It made additional labor in handling them and weighing them and keeping track of them.

Q. How many papers in this lot?

A. There are 21, but there are 12 scale tickets which I have counted as one lot; they are similar.

Q. What do you mean by 12 scale tickets? Just explain that.

A. There are 12 separate sales of stock.

Q. Does that also show that there are 12 weighings?

A. Yes; there are twelve drafts in the entire lot before they were finally disposed of.

Q. Now, in the case of the papers that you spoke about, where the stock was transported and went on, how many papers less than those are necessary where the cattle are absolutely sold and taken to the packing-houses or driven out?

A. Well, it would vary according to the transaction. I do not know that I can explain it better than to say it is possible and not an unusual thing for a car-load, say, of 20 cattle to be sold in twenty different lots; they may be sold to twenty different people.

Q. Now, in what way does that increase the trouble and expense of the stock yards company?

A. It makes—instead of their being weighed all at one time, one draft, it makes 20 separate drafts of the scales, 20 separate
793 entries in our records, 20 separate records in our scale accounts and division accounts, and multiplies practically all the detailed work 20 times what it would be if the stock was sold all in one lot.

Q. State whether or not any charge is made to the shipper or the owner of the stock for the labor and work that the stock yards company has to do in connection with these records and furnishing information to them from them outside of the yardage and feed.

A. There are no other charges whatever.

Q. Where separate sales are made of a car-load of stock, how is it as to the separation after the sales are made?

A. Each lot of stock is kept entirely separate and mixed with others only at the option of the owner of the stock.

Q. You stated in your examination something about crippled hogs and sheep. What service do your employés render concerning that class of stock?

A. They are carefully loaded into wagons built for that purpose and taken to the pens and cared for until disposed of.

Q. For whom is that service performed?

A. Exclusively for the owner.

Q. Is there any charge or expense to the owner for that outside of yardage and feed?

A. No, sir.

Q. About how much stock comes in there?

A. The receipts of stock vary from a few cars up to over one thousand.

Q. On account of that matter what is it necessary to have in the way of sufficient labor and employés to look after them?

A. The company is obliged to maintain a maximum number of men to handle the maximum business. The stock arrives at all hours of the day and night, and it is impossible for us to procure help temporarily in case it is required at all times.

Q. How is it as to haste or speed in looking after the cattle and stock after it is received?

A. It is absolutely necessary that the stock should be handled expeditiously and promptly as soon as it arrives on account of the shrinkage. Stock oftentimes arrives after being on the cars for hours, and it sometimes happens that cattle are down in the cars, in bad shape and liable to die, and owing to the conditions of the market it is the aim of the shippers to place their stock on the market at the earliest possible time so as to get the full benefit of the market. The railroads have arranged their train service
794 in such a way as to deliver the bulk of this stock in the morning between 4 and 8 o'clock, so that there shall be as little loss as possible to the shipper in its transportation.

Q. Generally at what time of day are the sales of stock made?

A. The market is usually between eight and twelve o'clock, although the hours of the market vary; sometimes the market will open earlier and sometimes later than those hours.

Q. What is the practice as to weighing cattle there before or after they are fed?

A. They are usually fed before being weighed; fed and watered.

Q. In feeding and watering the cattle in what *does* does it change their weight or increase their weight?

A. In the case of cattle the feeding and watering often increases their weight from 30 to 50 pounds per head on an average. It makes the cattle look fuller and adds to their appearance and consequently to their value.

Q. Do you have under your supervision anything to do with looking after the special amount of feed that is furnished to stock?

A. I have general supervision over the feeding of stock.

Q. State how much hay is fed to the car, what you call an ordinary feed.

A. The usual practice is to feed about one hundred pounds to the car.

Q. How many head in a car usually?

A. 22 to 25 on an average.

Q. How much do you feed to a car of hogs?

A. The amount varies; usually one bushel.

Q. Of what?

A. Of corn.

Q. How many head of hogs are there in a car?

A. They will average this season of the year about 70; it varies according to the season.

Q. How much do you feed to a car-load of sheep?

A. About fifty pounds.

Q. How many sheep in a car, generally?

A. Single decks about 120; the double decks would run from 220 to 240.

Q. How much hay did you say?

A. That was to the single deck; about 100 pounds to the double deck.

Q. Of hay?

A. That is what we would consider a fair feed for a car-load, although in the case of sheep I think our average feed would run not to exceed fifty pounds to the car-load right through,
795 double and single decks, that we actually feed to the sheep.

Q. Have you got in your possession and under your charge a list of the origin of all stock that was received at your yards during the past year?

A. Yes.

Q. What does that show; just generally?

A. It shows the origin of stock.

Q. What do you mean by the origin?

A. As shown by the freight bills delivered to us by the different railroad companies.

Q. In this same connection we desire to offer a map which is held up by Mr. Child. What does that map show?

A. It is a map of the United States, giving the number of head and class of stock received from each State at the Kansas City stock yards in 1896.

Q. In order to make it a little more definite, we will take the State of Kansas, say. Just read off to the master the number of cattle received in Kansas in 1896.

A. 863,430 head.

Q. Number of calves?

A. 33,133.

Q. Number of hogs?

—. 1,625,848.

Q. Sheep?

A. 294,997.

Q. Horses and mules?

—. 32,188; total, 2,849,596.

A. Without giving over the other States, just state whether or not the figures as to the other States are correct also.

A. I have not examined this map.

Q. Are your figures correct?

A. My figures are correct.

Q. Here is the State of Iowa, is it not?

A. Yes.

By Mr. LITTLE: Tell me where he gets these figures.

Q. I understand you are in charge of the operating department, bringing in the cattle?

A. Yes. These figures are made up from the records furnished by each railroad company delivering stock, showing the origin of the stock, made under my supervision. The railroad companies deliver the stock and their bills show the origin of the stock.

By Mr. LITTLE: The freight bill?

A. Yes, sir.
Q. From a record kept each day?
A. Yes; each bill is kept, a record of each day.
By Mr. LITTLE: The freight bill shows what town shipped from?
A. Yes.
796 Q. What is the next paper you have?

By Judge HORTON: I call the master's attention to the location of Iowa with respect to Kansas City, Chicago, and Omaha.

A. Do you want the figures?
Q. No; they are—we will call the attention of the court to them.
Q. These figures here are for what Minnesota ships to Kansas City?
A. Yes.
Q. And here is Tennessee?
A. Yes, sir.
Q. And Alabama?
A. Yes, sir.
Q. And Georgia?
A. Yes, sir.

Judge Horton, counsel for the complainants, here offers in evidence the two packages of papers or records identified by the witness and explained by him, covering the receipt, handling, and disposition of stock in the yards. The first set explained is marked for identification Ex. G, C. H. N; the second set, Ex. H, C. H. N. Admitted without objection.

Judge Horton also offers in evidence the map identified by the witness, being a map of the United States, showing in large figures marked upon the States and Territories the number of head of live stock received by the Kansas City Stock Yards Company from such States and Territories. The same is marked for identification Ex. K, C. H. N. Admitted.

Judge Horton also offers in evidence the list identified by the witness, showing the origin of stock received at the Kansas City stock yards during the year 1896. Admitted without objection and marked for identification Ex. I, C. H. N.

Q. What have you there?
A. I have a list showing the disposition of stock as made to us by the railroad agents—shippers—designated on their shipping orders.
Q. Now, the first list shows where all the cattle comes from?
A. All the stock.
Q. I mean all the stock.
A. Yes, sir.
Q. And the second list shows where it all went to?
A. Yes, sir; the entire disposition of all the business for the year 1896.

797 Judge Horton, counsel for the complainants, offers in evidence the list identified by the witness, showing the disposition of stock received by the Kansas City stock yards during the

year 1896. Admitted without objection and marked for identification Ex. J, C. H. N.

Q. In giving the various items of account, etc., state whether or not, with your knowledge of the yards and their supervision, these services, salaries, and accounts are proper or not.

A. Yes, sir; they are.

By Mr. BOYLE: What do you refer to, Judge?

By Judge HORTON:

Q. I asked him if, in giving his statement about the services and employés' accounts, they were necessary in the operation of the yards. (To the witness:) You gave me a general account of the laboring men in a memorandum which you handed me. Just divide them. I would a little rather have the division; probably you could do it here?

A. I have that in my memorandum back here.

Q. As you have got them divided, what number of men are there in the various divisions?

A. On an average, there are employed in the yard and shipping office, 175; in cleaning the yards, 33; repairing the yards, 20; employed at the barns, 68; clerks, 20; in the Stock Exchange building, 18; storekeepers, 2; in the power plant, 6; blacksmith shop, 4; total, 346.

Cross-examination:

By Mr. BOYLE: How many carpenters do you employ now?

A. I am unable to say, as that department is under the supervision of Major Drought.

By Judge HORTON: He is here, is he not?

A. Yes, sir.

Q. What employés do you direct or have exclusive jurisdiction over?

A. I have general supervision over the entire force, more particularly, though, the employés handling the live stock.

Q. Then you have charge of the yardmen who do the actual and practical business work of the yards daily?

A. Yes.

Q. Now, these yardmen are divided into what classes of service?

A. As I have them classified here, yardmen and shipping office men are in one classification——

Q. Let us talk about the yardmen first. What are the duties of the yardmen?

A. They are various; they unload and load the stock, do the weighing, feeding, and general care of the live stock.

798 Q. How many such men have you now employed in the stock yards?

A. In March—I am unable to say just today, because our yard force varies from day to day and from week to week, according to the demands.

Q. Why do you select March?

A. To get at the approximate number. There is about the same number employed now as in March; that will answer your question as correctly as I can.

Q. How many were there employed there in March?

A. 164.

Q. 164 yardmen?

A. Yes, sir.

Q. What do they get a month?

A. Their pay varies from $25.00 to $150.00 a month.

Q. What class of yardmen get $25.00 a month?

A. Gate boys, water boys, and some of the scale boys.

Q. Gate boys, water boys, and some of the scale boys?

A. Yes, sir.

Q. What do those $25.00 scale boys do?

A. They follow the stock from the scales after it is weighed.

Q. That is all they do?

A. At times they assist in loading and unloading stock, of course, when they are needed.

Q. Who does the weighing?

A. The weighmasters.

Q. How many weighmasters have you?

A. We have 14 at the present time.

Q. What do they do besides weighing cattle?

A. Most of them do nothing but weigh stock; about half of them do some clerical work.

Q. Where?

A. In the shipping office.

Q. Do you know how many of them do clerical work? If you don't know, who would know?

A. I know.

Q. Well, how many, then?

A. At times they all do clerical work, but as a general thing there is only about half of them do clerical work for a short time each day.

Q. So, that if these weighmasters did not do this clerical work referred to it would be necessary for the stock yards company to employ additional help?

A. Yes, sir.

Q. So they perform two functions?

A. Yes; it is not necessary to operate all the scales for the entire day.

Q. What do you pay your weighmasters a month?

A. $75.00.

Q. That is, each one of them gets $75.00 a month?

A. Yes, sir.

Q. Now, it don't make any difference whether there are 20
799 weighings or one weighing, the expense is the same to the stock yards, is it not?

A. Yes, sir.

Q. So, then this idea that you may weigh one man' stock several

times don't cut any figure as to the stock yards company, except the wear and tear of openining and shutting the gates?

A. Only in the aggregate. Of course, where stock is weighed more than once it necessitates more facilities and more men to do the work. If all the stock were weighed twice, as an example, we would be obliged to increase our scale facilities, our number of weighmasters, and the number of scale employés to do the work.

Q. Well, I say as it is now, the fact that a man's stock is weighed two or three times does not create any additional expense to the stock yards company, does it?

A. Well, it does, certainly; because if it were not for that we would not be obliged to maintained as many scales as we do nor as many weighmasters or as many scalemen.

Q. How many car-loads of cattle go into the yards, as an average, we will say?

A. I could not say that without figuring it. I can give you the aggregate received in 1896; 113,594 car-loads.

Q. Give it for one day, I mean.

—. The highest receipts were 1,002 car-loads.

Q. In one day?

A. Yes, sir.

Q. All these cattle must be weighed, must they not?

A. Not necessarily; not unless they are sold.

Q. Well, what percentage of cattle in there that are sold?

A. About 95 %.

Q. Well, then, practically all must be weighed?

A. Yes, sir.

Q. Now, you claim that you must keep a maximum force of help there all the time, because the capacity of your yards is a certain amount and you are liable to receive each day a sufficient number of cattle to call into operation *foe* full capacity of your yards?

A. Yes, sir.

Q. How many of cattle would be in this 1,000 car-loads of stock?

A. There would be, if they averaged 25 to the car; it would be from 22,000 to 25,000 head.

Q. If they were all cattle, how many weighmasters would it take to weigh those, say once, and to perform the necessary functions?

800 A. It would be impossible to answer that, from the fact that the capacity of the scales is from 60,000 to 80,000 pounds each scale, and as the business is done the full capacity is not required for each transaction. In the course of the ordinary, usual business the average number weighed in 1896 was about 10½ cattle to each draft. The total number weighed, if you desire it, in 1896, was 2,080,133 head; there were 192,997 drafts required to weigh them.

Q. How many gate boys have you?

A. There are four.

Q. Those are included in the 64 men?

A. Yes, sir.

Q. How many water boys have you?

A. About ten.
Q. Do you pay all your gate boys $25.00 a month?
A. No, sir.
Q. What do you pay them?
A. Some of them get $35.00.
Q. How many get $35.00?
A. There are two out of the four that get $35.00.
Q. And the other two get what?
A. $25.00.
Q. How much do your water boys get?
A. They get $35.00—is the usual price.
Q. What do you pay them?
A. We pay them $25.00 and $35.00.
Q. How many do you pay $25.00 to?
A. At the present time, I think we are paying all of our water boys $35. When we employ a new boy, until he gets the run of the yard and the business, he is paid $25, and then that is increased as he becomes efficient.
Q. You state it is a fact that you are now paying them $35 a month?
A. Yes, sir.
Q. How many scale boys have you?
A. About 25 scale boys now. Let me correct that: there are about 35 scale boys.
Q. How much do you pay them a month?
A. They will average $35.00.
Q. What are your wages to them?
A. Well, according to their proficiency; some of our scale boys or scale men—it is hard to make the distinction, because some of them are boys that simply follow the stock from the scales after it is weighed, and there are others that go ahead of the stock to the pens and do other work early in the morning.
Q. You say there — 35 of these scale employés?
A. Of the boys; yes.
Q. You pay them how much a month, those scale boys?
A. We pay $35.
801 Q. How many scale boys have you; that is what I want to get at?
A. About thirty-five boys.
Q. You pay them $35 a month?
A. Yes, sir.
Q. Do any of those do anything else other than to follow the cattle from the scales to the different pens?
A. They assist in unloading and loading stock.
Q. That is, they assist in taking stock from the cars at these chutes and assist in loading them in the cars after they have been sold?
A. Yes.
Q. For which the stock yards company gets fifty cents a car for unloading and fifty cents a car for loading?

A. Well, the company gets fifty cents for loading, and the service it performs for the road in handling its freight.
Q. I say they get that, don't they?
A. And all that is included; yes, sir.
Q. I am not asking as to details.
A. Yes, sir; it is included in their charge.
Q. What proportion of the work do your scale boys do?
A. A very small proportion.
Q. A very small proportion?
A. Yes.
Q. But they do some of it?
A. Yes; some of it.
Q. We will pass on, then; you have 35 scale boys, ten water boys, and four gate boys?
A. Yes, sir.
Q. Now, what other classes of employés have you there around the yards?
A. Well, there are the yardmen.
Q. Now, what do they do?
A. They unload and load stock and feed it and do general yard-work.
Q. How many of those have you?
A. I could not say without making some estimate.
Q. Haven't you got any memorandum by which you can tell?
A. I have no memorandum classifying them in that way. Take the yard officers, the foremen, then our yardmen, then the scale boys, and water boys, would be the classification, until I could figure——
Q. I want to know how many yardmen there are, as you distinguish them from scale boys and gate boys; I want to know exactly how many there are.
A. I would have to figure it out.
802 Q. Just figure it out, please.
A. How many water boys have you there?
A. You gave me ten.
A. There are about 68 yardmen.
Q. How do you come to that conclusion?
A. By separating the force into divisions and taking the total number.
Q. These 14 weighmasters—are they included in this 164?
A. Yes, sir.
Q. There are 14 weighmasters?
A. Yes, sir.
Q. Now, you say there are how many yardmen proper?
A. About 68.
Q. What do you pay them a month?
A. Their pay runs from $45 to $60 a month.
Q. How many do you pay $45—that is, the minimum price that you pay to yardmen—$45 a month? There are no yardmen working over there who get less than $45 a month?
A. Not at the present time. When we employ new men they are

employed at $40 a month, and usually as soon as they have worked one month then their pay is increased to $45, and after they have become proficient and acquainted with the yards so that they can count stock and know the yards their pay is increased to $50 a month; out of those we select the foremen.

Q. The least that you pay any of these men now is $45 a month for the yardmen?

A. Yes, sir.

Q. How many are working at that price?

A. I should say there about five or perhaps six.

Q. Mr. Rust, who keeps the books where records of the monthly payments are kept?

A. You mean the time book?

Q. Yes; the time book showing the account of the labor?

A. That is kept by our yard superintendent.

Q. Do you keep any books?

A. No, sir.

Q. You keep no books whatever?

A. None whatever myself. Of course I have books in my office that are kept by my clerks under my supervision.

Q. Who do those books contain?

A. They contain statistics showing the number of cars and the contents, the number of head in each car each day. They show the origin and disposition of the stock, the buying of the principal buyers, for instance, the packing-houses' purchases for each day, and the number shipped each day.

Q. Do those books of yours keep any record of the men that are employed?

803 A. The time book is submitted to me each month, which I look over occasionally.

Q. That time book of yours would give us the most information, wouldn't it, of the number of men employed and the amounts that they are paid, and so on?

A. That does not show the amount that is paid for the present day. For example, the record of the men's time is kept in that book, and at the end of the month the book is submitted to me and I put the price of the labor on it.

Q. What are those books that you say are kept in your office?

A. There is one book which shows the record of receipts—daily receipts.

Q. That refers to the cattle that are received?

A. Cattle, hogs, sheep, horses, and mules and all other receipts, origin and disposition of the stock——

Q. Origin refers to the place where the cattle come from?

A. Yes; the stock.

Q. That is, the State?

A. Yes; the same as I have submitted in this statement here.

Q. Disposition means where they go to?

A. Yes.

Q. What else?

A. A register of the purchases. That is not a record of all pur-

chases; it is a record showing the purchases by the packers and the principal shippers.

Q. Where is the record kept of the incidental shippers—that is, those who are not classed as principal shippers?

A. That is kept at each scale. As each book is completed it is returned to the freight office and filed and kept filed away for future reference, each volume as it — completed.

Q. What other books, now; what other statistics do you keep?

A. I think those are all that are kept in my office.

Q. You have a time book?

A. The time book is kept by our yard superintendent.

Q. He is under you?

A. Yes, sir.

Q. That book is in your office?

A. No; that is in his office in the yards, as well as all the records of receipts and statistics relating to live stock.

804 Q. The yard superintendent has that in his possession—the time book?

A. Yes, sir—that is, of the yard employés.

Q. That book gives the names of the men that are employed as yard employés?

A. Yes.

Q. And the number of them?

A. Yes, sir.

Q. What record have you over there where it shows the prices that are paid to these employés?

A. Well, that record would be in Mr. Richardson's office. The pay-roll is made up from this time book and paid from that.

Q. What is the yard superintendent's name?

A. John Mitchell.

Q. What is Mr. Richardson's name?

A. E. E.

Q. He keeps in his office—what is the title of that book?

A. That would be the pay-roll.

Q. This pay-roll shows the amount that is paid to each man during the different months?

A. Yes.

Q. Now, there are 68 yard employés?

A. Yardmen.

Q. Their wages run from $45 to $60 a month?

A. Yes, sir.

Q. You don't attempt now to recollect the number that is paid these different prices?

A. No; I couldn't do it.

Q. You have no memorandum of it with you?

A. No, sir.

Q. Sixty dollars a month. How many receive sixty dollars a month. They are called yard foremen, are they not, that receive sixty dollars a month?

A. Yes, sir.

Q. How many yard foremen have you?

A. Well, the yard foremen receive from sixty to one hundred dollars a month.

Q. What are the fellows who receive $100 a month called?

A. They are division yardmasters.

Q. What is the distinction between a yard foreman and a yard *foreman*?

A. A division yardmaster has charge of a division of the yards. There are three divisions of the yards.

Q. Then there are three that get a hundred dollars a month?

A. Not all of them; no, sir.

Q. How many of them?

A. I will have to explain. We have a general yardmaster and we have a yard superintendent.

Q. While we are going along we might just as well clean
805 up. Is this general yardmaster included in this 164 employés?

A. Yes, sir.

By Mr. PRATT: I think it will save some time if we produce the pay-rolls, and we will do that this afternoon.

Q. There is one general yardmaster, you say?

A. Yes, sir.

Q. And three division yardmasters?

A. Yes, sir.

Q. And under them come the yard foremen?

A. Yes, sir.

Q. And under them come the rustlers in the yards? I don't know what you call them.

A. The yardmen.

Q. And the salary that each of these employés receives is given in your pay-rolls and different records up there?

A. Yes, sir.

Q. Are you accurate in your statement that there are 164 employés?

A. That is what our March pay-roll shows.

Q. What does these 164 employés include?

A. Well, it includes the yardmen, yard foremen, yardmasters, scalemen, water boys, and gate boys.

Q. Clerical force?

A. No.

Q. You haven't 164 men over there now employed in the same capacity that the books in March indicated?

A. Practically the same. They may vary a little.

Q. What makes them vary?

A. According to the amount of business that we are doing. Some days some of our men are liable to be sick. Oftentimes we have from one to half a dozen or more sick and unable to work that day.

Q. Sometimes you have more employed than at others on account of the business?

A. Yes, sir.

Q. What is the largest number that you employ there? How

many men would it take to do the work of these yards if they were run to their maximum capacity?

A. In that department, it would probably require three hundred men.

Q. In the department of yard employés?

A. Yes.

Q. So you don't keep employed the number of men that is necessary to do the maximum amount of business?

A. Well, if you consider the largest one day's receipts as the maximum amount of business, it would require 300 men, probably, to do the work; but as the business comes, that I would consider the maximum business is very much less. For instance, at this season of the year our largest day's receipts is from 600 to 700 car-
806 loads in one day, and from that they would run down to 100 car-loads in a day.

Q. So, when you say you must keep the maximum number of men to do the work you refer to the general run of business that comes to your yard?

A. Yes, sir.

Q. And not to the capacity of your yards to do the business. Do you catch my point—that is, the distinction that I am seeking to make?

A. Yes; I think I do. What I call the maximum amount of business is the largest receipts that we are running from week to week or month to month. You understand that in our business our business varies with the seasons.

Q. And you employ more or less men as the season necessitates?

A. Yes.

Q. And the number of men you employ is governed by the number of cattle that comes to your yard as a general proposition?

A. Yes; the amount of stock that we receive.

Q. If business is poor—that is to say, if there are but few cattle being shipped here—you employ less men?

A. Yes.

Q. And if there are a greater number of cattle you employ more men?

—. ——.

Q. You do your business the same as any other business institution?

A. Yes, sir.

Q. You don't employ men just simply to sit around there for the benefit of the stock-shippers, do you?

A. We employ just the number of men that are needed to keep the work and keep the business going.

Q. You run that business over there for the benefit of the stock yards company—that is, to make the most possible receipts out of it?

A. No, sir.

Q. Whom are you running it for?

A. We are running it primarily for the benefit of the stock yards company.

Q. That is what I asked you.

A. Yes; but not as economically or on as low a pay-roll as we could do it by sacrificing the business. In other words, the policy of the yard company has always been to give the *vest* best service and treatment to the patrons of the market.

Q. That is the way you have developed a good reputation for yourselves, is it not?

A. Yes, sir.

Q. And have protected the business in that way?

A. Yes, sir.

807 Q. You have the largest stock yards in the country by reason of the efficient services that you have rendered and the proper manner in which you have run your business; isn't that true, Mr. Rust?

A. Our business has been very largely increased by reason of the facilities offered the patrons of the market and the liberality of the management in handling their business.

Q. Well, then, you have run this business over there on business principles. Whatever you could do to promote the business you did it?

A. Yes.

Q. Speaking of these quarantine yards, are they in as good condition as the rest of the yard, Mr. Rust?

A. You mean physical condition?

Q. Yes.

A. Yes, sir.

Q. The flooring, fencing, and all the things that go to make up the yards over there are in just as good condition as any other portion?

A. They are kept in good, serviceable condition.

Q. I asked you if they are kept in as good condition.

A. Yes; some of the flooring and some of the fencing is old, but still in good, sound, serviceable condition.

Q. Is it in as good condition as the other portion of the yards?

A. Yes; it would average as well as the other portions of the yards for the purposes.

Q. I do not mean that; I simply ask you, is it in as good condition of preservation today as the other portions of the yards? It may serve the purposes of quarantine, for the purposes you *you* use it, as well as any other portion of the yards?

A. For the comfort of the stock and the convenience of the business it is in as good condition as the other portions of the yards.

Q. You do not answer my question. Is it today in as good condition as the other portions of the yards? I do not mean for the purposes for which it is used or the comfort of the stock, but is it in as good physical condition as the other portions of the yards?

A. It is in as good condition as any other portion of the yard that has not been paved. You understand that the pens in the quarantine yards are still floored with flooring. We consider that the pens in the native yards, which have been paved with brick,

are the best yards. There are about 30 acres of the native yard which have been paved with brick.

808 Q. Is that portion of the yards in Missouri or Kansas?

A. Part in Missouri and part in Kansas.

Q. How much in Kansas?

A. A small proportion; I should — perhaps four or five acres I guess there are more than that; I was just thinking of the alley: In the native division the alleys are paved with *with* brick and large part of the pens are paved with brick.

Q. How does it come that the greater portion of the pavemen is in Missouri?

A. It is the newer part of the yards.

Q. The extension of the yards, as they have grown, has bee over into Missouri?

A. Yes, sir.

Q. As the yards have increased in business the physical line ha cut no figure about your business as to doing business in Kansa or Missouri?

A. No, sir.

Q. You can do business in one State as well as the other?

A. Yes, sir.

Q. Therefore as your business increased it flowed over into Mi souri. It was simply the annual growth of the yards that cause that extention, was it not?

A. The yards have increased both in Missouri and in Kansas.

Q. Whichever way they have increased it is due to an increas of business?

A. Yes. I want to correct one thing about that pavement. T the best of my judgment there is about one-third of that pavemen in Kansas of the 30 acres; I should say about one-third of it—te acres—was in Kansas.

Q. What portion of the year is it that your quarantine yards ar used?

A. From the 15th of February until the 15th of November.

Q. In the interim those yards are not used?

A. They are not used for sale purposes.

Q. What are they used for?

A. They are used for holding pens for the stock yards locate on that side of the river.

Q. That is to say, the packing-houses use these pens for thei private convenience?

A. For their convenience as well as ours. During the winte months, from November to February, and often at other times th native division becomes oftentimes full.

Q. Crowded?

A. Crowded, and as soon as stock is weighed it is taken over t those yards and held there temporarily until it can be take

809 over to their houses.

Q. Who takes it to their houses?

A. Their own employés.

Q. Who takes them to these quarantine yards?

A. They are partly taken by the stock yards employés and partly by their own employéd.

Q. As a rule who takes them over there?

A. Their own employés.

Q. You say from February to November these quarantine yards are in actual use?

A. Yes, sir.

Q. What is the general run of that business—that is to say, how many cars come to those yards on an average?

A. The receipts at the quarantine yards in 1896 were 11,675 carloads.

Q. And those cars must have come there between February and November?

A. Yes, sir.

Q. And then from November up until February those yards are not in actual use in the ordinary acceptation of the term for sale yards?

A. No, sir; they are not.

Q. From February to November, then, you must have an increased force, must you not?

A. Yes, sir.

Q. You have to employ additional men for these quarantine yards?

A. Yes, sir.

Q. So you don't have to keep a force of men necessary to run the quarantine yards the year around, do you?

A. No, sir.

Q. It only applies between February and November?

A. I wish to say right in there that between those periods, the 15th of November and the 15th of February, we keep men employed in those yards constantly to care for them and to guard against fires.

Q. Watchmen?

A. Watchmen; yes.

Q. You have watchmen over there to watch those yards?

A. Yes, sir; day and night.

Q. But you have no yard force, I mean?

A. No, sir; no sales are made there; no selling is done.

Q. So that the statement that has been made here that it is necessary to keep the necessary number of men to do the business in those quarantine yards separate and distinct from the native yards referred only to the time when they are in use?

A. Counting the watchmen, of course there is constantly a
810 force employed there the year around that would not be necessary but for the quarantine yards.

Q. Well, now, when you come to the quarantine season how many cars a day, on an average, do you receive over there?

A. It varies from one or two cars to three to four hundred cars in a day, according to the season.

Q. Do you have separate quarantine employés for that business or do the employés around about the yards do the business?

A. We employ extra men on the general force when necessary, but of course we do not put one man over there and keep him there for the season.

Q. You simply increase your general force whenever your work demands it?

A. Yes; in the operation of the yards we move men from division to division as the business requires.

Q. What has been the run of cattle into the quarantine yards during last month?

A. It has varied from two or three cars up to 50 or 60 a day.

Q. Referring to this water question again, where the stock yards company has entered into a combination with the sellers to increase the weight of their cattle?

A. Combination with the owners?

Q. Yes. Have you ever bought any cattle for any of these institutions around here, the packing companies, and so on?

A. No, sir.

Q. Do you know anything about that business?

A. Yes, sir.

Q. What influence does the amount that a beef, hog, or whatever it may be, will dress have upon the purchase of the animal?

A. You mean the percentage of meat after it is killed out?

Q. Yes.

A. It has a very great deal to do with the value of it. Of course the greater percentage of meat an animal will produce, the greater the value of the animal.

Q. When the buyer purchases his stock he has that in view, has he not; that is one of the points that he has in view?

A. Certainly.

Q. These buyers for these packing-houses are high-priced men, are they not, Mr. Rust? Some of them get very large salaries; they are experts, are they not?

A. Yes; I understand so.

Q. You know that is true, don't you, Mr. Rust, in a general way?

A. Yes.

Q. Do you think as a practical business man, as a man who has been engaged in this business for a number of years that you have been, that these packing companies are deceived by this
811 water supply that the stock yards company gives these shippers?

A. No, sir; that is considered in buying the stock; it is simply a custom.

Q. You say that Mr. Dean had supervision over these quarantine stock yards?

A. Yes; he directs what *us* necessary. He directs what stock shall be placed in them and the general cleanliness of them.

Q. Does he direct as to the condition that they are to be kept in and as to the repair in which they are to be kept?

A. No, sir; nothing more than is connected with the disinfecting.

Q. Say that your floors are not in very good condition, that is no criticism upon Mr. Dean's work?

A. No, sir; he has nothing to do with that part of it.

Q. You introduced a number of papers here, Exhibits G and H. These papers represent blanks that are put into the hands of different employés through whose care and charge cattle go from the time they are unloaded up until they are reloaded?

A. Yes, sir; it applies to all stock.

Q. There is no special clerical ability required to put on the figures where the cattle is from, the name of the consigner and the name of the consignee, and so on, is there, Mr. Rust?

A. It requires accuracy.

Q. It requires a man who can write?

A. It requires accuracy. Men can write without being accurate. It requires special ability in that line, especially in the statistical department.

Q. But special clerks do not have to be employed to make out these different papers, do they?

A. Yes; I should say it requires a special class of clerical ability to do certain parts of our work.

Q. Take your weighmaster. Take some paper there that your weighmaster has signed up.

A. Well, take the scale record and the scale ticket.

Q. Now, he performs that duty in connection with the other duties that he performs, does he not?

A. Well, yes; that is his main employment; that is what he is paid for.

Q. *How* main work is weighing and recording the weight of stock; who gets out that paper?

A. This weighmaster.

Q. Who gets out that one?

A. This division man, the deliveryman, the scale foreman when he counts the stock from the scales.

Q. What does he do?

A. He counts the stock as it is weighed and keeps a record of it, and directs where it shall be placed.

812 Q. Is this his particular duty also to get that out?

A. He keeps that as a record.

Q. What else does he do?

A. He counts the stock as it comes from the scale; he makes this record and he directs the employés in returning it to the pen after it is weighed, and supervises the general movement of the stock over that particular scale.

Q. And among his other duties he makes out this ticket?

A. Yes, sir.

Q. What is this little business here?

A. That is a slip which the scale foreman makes that he delivers to the employé taking the stock back to the pens.

Q. That is the same man that made out this one?

A. Yes, sir.

Q. What is this?

A. That is the record of the deliveryman into whose division the stock comes after being weighed.

Q. Who is this deliveryman; what does he do; what are his duties?

A. He has general supervision over a certain section of the yards; he keeps a record of all stock coming into that division and going out of that division.

Q. And among his other duties he makes out these tickets?

A. This record.

Q. He carries these little blanks around in his pocket?

A. In a book.

Q. That he carries in his pocket?

A. Yes, sir: he keeps a record of each transaction.

Q. These blanks are furnished to him?

A. Yes; they are mainly for the purpose of tracing the stock and keeping control of it in the delivery, and so on.

Q. Now, all of this is done for the convenience entirely of the shipper?

A. Convenience of the trade in general. In the course of the general business, it is necessary. In other words, the stock yards company is compelled by the situation to keep a complete record of each lot of stock received and the title to it. Without that record we might, through ignorance or mistakes, make wrong deliveries of stock without proper title being furnished for it.

Q. For which you may be liable in damages, etc.?

A. Exactly.

813 Q. So the primary case is to keep a perfect record for the benefit of the stock yards company?

A. And the owners.

Q. And the owners?

A. Patrons of the yards are oftentimes obliged to come to us for information as to where their stock is, and we are obliged to furnish it.

Q. But the great purpose is that the stock yards company may always have at its hand the record of the title of the stock, etc., as it goes through the yeards?

A. For the benefit of the owners and the benefit of us.

By Mr. LITTLE: Could you do business with it?

A. No, sir; we could not without becoming liable for wrong deliveries and damages resulting therefrom.

By Mr. LITTLE: Coulsn't do it at all?

A. We could do business, but it could not be done in a very business like way.

By Mr. LITTLE: You wouldn't get any trade, would you?

A. I think not.

Q. So that is the real motive that causes you to keep that?

A. Yes, sir; it is absolutely necessary in the running of those yards.

Q. You say that most of the cattle is received in Missouri?

A. No, sir; I did not say so.

Q. What did you say with reference to that?

A. I don't know that I said where the cattle were received; they

are received both in Kansas and in Missouri. A very large part are actually unloaded from the cars in Kansas.

Q. The greater proportion of the cattle?

A. Yes, sir; they go from Missouri into Kansas in delivering the stock to the stock yards company; they cross the State line, you understand.

Q. Then, when the stock is turned into the yards on the Kansas side they may, in the general running of the business, some of them happen to get over on the Missouri side in distributing them?

A. That is entirely optional with the owner as to where they shall go. There is no distinction as to the State line in the transaction of the business at all, in the handling of stock.

Q. How long have you been identified with the yards, Mr. Rust?

A. Since December, 1880.

814 Q. Then, for about ten years since you have been identified with the yards, they have charged 20 cents a head for cattle?

A. Yes, sir; yardage for cattle.

Q. The stock yards during the whole period of time that you have been connected with them have steadily grown, have they not, and increased in size and importance?

A. No, sir; the high-water mark that we reached was in 1890. Our largest receipts and shipments were in 1890. That was the largest year's business we have ever done. Our largest receipts of hogs were in 1890, and since 1890 the receipts of hogs have never reached the number reached in that year. Our cattle receipts, however, have increased since that time until last year was the largest year of cattle receipts.

Q. How do you account for the decrease in the number of hogs that you received in the last seven years?

A. Only in a general way that 1890 showed the maximum number marketed in territory tributary to this market.

Q. Are you familiar now with the actual amount of money? Do you know what it takes to run these yards? The actual money that is spent?

A. No, sir; I do not.

Q. Do you know the actual amount of money that is invested in the business enterprise as a business?

A. No; I don't.

Q. You don't know anything about the increasing of their capital stock?

A. No, sir.

Q. What do you get a month, Mr. Rust?

A. I shall decline to answer that question unless it is insisted on.

By Judge HORTON: Answer it; it has got to come in any way.

A. My present salary is $5,000 a year.

Q. How long have you been receiving that?

A. Since the first of January.

Q. Of this year?

A. Yes, sir.

Q. What were you receiving prior to that time?

A. My salary from the time I commenced working for the stock yards company has been increased from time to time, but I have no memorandum which would show just when those increases were made.

Q. What did you get when you started?

A. $100 a month.

Q. What did you receive last year?

A. I think it was $4,800.

Q. How long did you receive that salary?

815 A. To the best of my recollection, about a year and a half. Previous to that it was $3,600 and previous to that it ran back to $100 a month. As I say, it was gradually increased.

Q. Now, what are your duties?

A. I have general supervision over the employés; I make the yard rules and regulations, subject to the approval of the management; I settle most of the claims for loss and damage to stock; I supervise in a general way the repairs to the yards; I keep in touch, as I expressed it, with the trade as to its movement over the whole country; occasionally solicit business on the road. I look after railroad freights. In case of discrimination against the market here and shippers, I work in connection with our transportation bureau in trying to induce railroads to give us more favorable rates. In fact, I have pretty general supervision over the business.

Q. Are you, then, the person who makes the arrangements with the roads or talks with the different managements of the roads in getting freight rates and so on to Kansas City for your stock-yards business?

A. I do some of that; yes.

Q. Who else does it?

A. Mr. Child and the management, Colonel Morse.

Q. Who is superior to you in charge over there?

A. Mr. Child, assistant general manager.

Q. What directions does he give you?

A. General directions as to the policy of the company, regulations, rules, etc.

Q. Is Mr. Morse superior to Mr. Child?

A. Yes, sir.

Q. Who is the superior of Mr. Morse?

A. The president of the company.

Q. His name?

A. Mr. Charles Francis Adams.

Q. Where is his home?

A. Boston, I think.

Q. Don't you know?

A. No, sir.

Q. How frequently do you see Mr. Adams?

A. I never have seen him but a few times; two or three times, probably.

Q. How long has he been president of the company?

A. I don't know.

Q. Does he ever give you any directions?

A. No, sir.

Q. Has he ever spoken to you in reference to the physical condition of the yards?

A. No, sir.

Q. I remember that something was testified to here by Mr. Child as to the number of tons of hay that was consumed last year by the stock yards company. Do you know what that is, Mr. Rust?

816 A. I think his testimony was 11,000 tons; 11,500 tons would be my estimate of the total amount of hay fed in the yards.

Q. Now, that was sold at 100 pounds to the car, as a general proposition, was it?

A. Yes; about 100 pounds is the average number of pounds. Taking the total receipts of cattle by car-loads, the amount fed to those cattle on arrival averaged 117 pounds, as near as I can get at it without keeping a strict account of it.

Q. So that, if you didn't have any record there as to the number of cars of cattle received, this would be one way of getting at the number of cars, would it—this 117 pounds of hay to the car?

A. That 11,500 tons includes all of the hay fed in the yards. I am simply speaking of the amount that is fed on the arrival of the cattle as near as I can estimate it.

Q. What other feeds does a car-load of cattle get besides that which is fed to them on arrival?

A. The purchasers of that stock feed it. We have a good many traders.

Q. Purchasers of the stock feed it after they have purchased it frequently?

A. Yes.

Q. You have some traders. Who are they and what are they?

A. They are men that buy stock in large lots and divide it up and resell it to different owners in smaller lots.

Q. So that one car-load of stock may receive several different feeds?

A. Yes, sir.

Q. Now, speaking about these bridges, viaducts, etc., which were built for the convenience of the shippers, is it not essential to the business of the stock yards company in order that it may have room and so on and expedite the business as quickly as possible for their own benefit?

A. Not necessarily. Of course, oftentimes it is a convenience to get the stock out of the way, but not necessarily so, except for the benefit of the owner.

Q. So you need not have built any of these bridges or viaducts or tunnels; you could have run the stock just the same as you can now, so far as the stock yards company itself is concerned, and so far as the amount of business that would be attracted to it is concerned?

A. No; the business would not be attracted because they
817 would not have the accommodations they have now.

Q. So that the primary object in all these improvements is to build up stock yards that will attract business, and thereby bring greater profits to the stock yards company?

A. Yes, sir.

Q. Now, referring again to these papers, I don't understand you to say that every car of stock that is brought there has an outfit of papers like that made out?

A. Every individual lot of stock has a series of papers similar to these here.

Q. One man may have five or six car-loads of stock?

A. Yes, sir.

Q. Therefore there would only be one set of papers for that amount of stock?

A. Yes; it would depend altogether upon its disposition. If one lot of six cars came into the yard and were simply fed, watered, and shipped, they would require just simply one set of papers, but in case they were sold or disposed of in other ways they would require more papers.

Q. These sets of papers which you have introduced here as Exhibits G and H represent completed transactions right from start to finish of a lot of stock?

A. Yes, sir.

Q. They do not necessarily refer to one car-load of stock?

A. It is the record of an actual transaction in each case.

Q. It might just as well refer to two or three car-loads of stock as to one car-load if the same disposition was made of it?

A. Similar papers would be used in the disposition of other stock in the same way. The stock would go through the same channel and would require the same papers that are used here.

Q. The car load phase of it don't necessarily control at all?

A. It is just a separate lot. It may be one car-load or it may be 20 car-loads. Of course, the more car-loads the more papers naturally would be required.

Q. I notice that you have here Exhibit J, in which you have given certain figures as to the disposition of stock. From whence did you secure these figures?

A. These figures are made up from the destination as given to us on the shipping order, and also as shown by our yard records.

Q. Who keeps those yard records?

A. They are kept under my supervision in the shipping office by the shipping master.

818 Q. That is one of the books, "Origin and disposition of stock," kept in your office?

A. Yes, sir.

Q. Who made this book up for you?

A. Our clerk.

Q. What is his name?

A. The particular list was made up by Miss Sly from this book.

Q. She is a clerk in your office?

A. Yes, sir.

Q. You just simply told her what you wanted, and she made it up?

A. Yes; she made it up from this record that we keep.

Q. You don't know whether that is correct or not?

A. All I can say it is an abstract of the record made up by her.

Q. That is what you understand?

A. Yes.

Q. I notice you have 108,906 cattle that you sent to Chicago. Now, you distinguish Chicago from Illinois because Chicago is a shipping point; is that the idea?

A. Because it is a market.

Q. Now, do any of these cattle which you have sent go to the Chicago yards?

A. I am unable to say, although I think most of them do.

Q. Why?

A. Because they are purchased and go to the packing-houses that are located adjacent to the Chicago stock yards.

Q. They go there simply to be penned up until the packing-house can handle them; is that the idea?

A. They are handled in the Chicago stock yards and taken by the packing-houses located there to the houses, the same as they would if they came here and were handled here and driven to the houses.

Q. Are they sold in Chicago or here?

A. Oftentimes both, and oftentimes neither. Oftentimes stock is billed through and not sold in Chicago. Oftentimes they are sold here and resold in Chicago. Then again it is purchased here by Chicago packers and shipped to Chicago.

Q. When it is sold here to the packers in Chicago, does that stock go to the Chicago stock yards?

A. Yes; the most of it.

Q. Why?

A. Because it — most convenient for them to get it into their houses.

Q. Now, there is another certain percentage of that stock that is not sold here, but is shipped on to Chicago, and is there sold and bought by those packers?

A. Yes.

Q. That is to say, when there is no market here or when
819 the price is not agreeable to the seller he may ship it on to Chicago?

A. Not necessarily so; the shipper may simply stop it here for feed and rest and then ship it on without offering it on this market.

Q. Then this 108,906 cattle refer not only to cattle that were sent here for sale, but were reshipped on to Chicago because of no market here, but it also refers to that other class of cattle that are shipped through and only stop here for feed, water, and rest or whatever it might be, and then is sent on to Chicago, as the through bill of lading indicates?

A. Yes.

Q. I notice you have St. Louis 19,929.

A. Yes.

Q. That is dictinguished from Missouri in the same way?
A. Yes.
Q. You have eastern markets 234,679. What do those include?
A. That includes markets at Louisville, Ky.; Cincinnati; Buffalo, N. Y.; Jersey City, Boston, and other small markets.
Q. Are they sold and shipped there?
A. Yes.
Q. They are sold?
A. Nearly all of it.
Q. Most of them bought here and shipped on there?
A. Probably 95%, anyway; perhaps more.
Q. And the greatest portion of the business is done in Kansas?
A. Well, it is done in Kansas and Missouri.
Q. But I say the greater portion of the amount of sales is done in Kansas.
A. Sales of these cattle?
Q. Yes.
A. I should say perhaps one-half. You mean the transactions are in these yards?
Q. Yes; the greater per cent. is.
A. I should say there is about one-half the sales made in Kansas and one-half in Missouri.
Q. The pleadings indicate that about 65% is done in Kansas.
A. I have no figures with me. I give that as my general judgm-nt without going into exact figures. I should say that fully one-half of the cattle business was done in Missouri.

Questions by Mr. LITTLE:

Q. I don't know that I understood you, Mr. Rust. You say there are about 170 acres in the yards?
A. About 170 acres.
Q. Is that all owned by the company?
A. I think I inc-uded in that a small part that is leased from other parties.
820 Q. From whom?
A. To the best of my knowledge there is a small tract leased from the Missouri Pacific Railway Company and a portion from the Union Pacific Railway Company.
Q. Do you know how extensive the area leased is?
A. It is small.
Q. Do you know how much is paid for it?
A. No, sir.

By Mr. PRATT: We will give you a detailed statement of that when Colonel Morse goes on the stand.

Q. You said there were 411 chutes?
A. Yes.
Q. There are 17 railroads going in there?
A. Yes.
Q. How many of those roads run on their own tracks and unload from them?

A. Shall I give the names of the roads that have their own track?

Q. Yes; you may.

A. There is the Union Pacific, Missouri Pacific—understand, this applies to the track only; all of these chutes are owned by the stock yards company.

Q. The stock yards company owns all the 411 chutes?

A. Yes.

Q. Are there any chutes that the railroad companies own?

A. No.

Q. These chutes are all on the stock yards company's land, are they?

A. They are on land owned or leased by the stock yards company.

Q. The railroad companies run their tracks along on the land they own?

A. Yes.

Q. You may tell us which roads run in on their own tracks and handle from their own tracks.

A. There is the Missouri Pacific Company, the Kansas City, Pittsburgh & Gulf—that is, the Suburban Belt, I think, is the local title to it. It catches the business of the Kansas City, Pittsburgh & Gulf and the Wyandotte & Northwestern, which is a part of the Missouri Pacific system. The Rock Island, in the quarantine division, handle from their own tracks, and in the native division they handle from the stock yards company's tracks and the Kansas City Belt tracks and the Union Pacific.

Q. Now, do any of these five that you have named ship their cars on to your track at all?

A. They all use our track on the quarantine side with the exception of the Rock Island, which uses its own track in that one division. Understand, all the other roads use the stock yards company's tracks.

Q. Except the Rock Island?

A. Except those that I have mentioned.

821 Q. On this side, away from the quarantine yards, do they use your track—the five roads that you have mentioned—at all? Is their business done on their own track on this side of the river, or do they use both their own tracks and your track?

A. You mean in the native division?

Q. Yes. For instance, does the Union Pacific use your track?

A. I will try to answer that by saying this: The Missouri Pacific, Kansas City, Pittsburgh & Gulf, or the Suburban Belt, as it is known here, and the Wyandotte & Northwestern, which is part of the Missouri Pacific Railway system, have their own terminals and their own track in the north division of the yards. All of these roads when they have quarantine stock would unload it and handle it on the stock-yards track in the southern division. In the southern division the Rock Island handles and unloads from its own track; all the other roads unload from the stock yards company's track. In the native division or in the central or main

division all the other roads—all the other 17 roads, including t
Rock Island—unload from the tracks of the stock yards compa
Q. Then every road uses your track more or less?
A. Yes, sir.
Q. And 12 of them use your track entirely?
A. Yes, sir.
Q. When they use their own tracks are the cars handled entir
by their own men up to the time that they are set before the chut
A. All the stock delivered is handled by the employés of the r
delivering the stock. The stock yards company has no moti
power; does not move the cars, although on our own tracks we h
a yardmaster who has control of the different roads or the differ
crews from each road when they come into the yards.
Q. Do you have any engine there?
A. No, sir.
Q. They switch with their engines up and down your little trac
A. They use our tracks for the business of loading and unloadi
stock.
Q. Then every car is handled by the employés of the respecti
road- up to the minute it is put in front of the chute?
A. Yes, sir.
Q. And when it is placed for unloading your employés t
charge of it then?
A. Yes, sir.
Q. They do that also on the other railroad tracks?
A. Yes; wherever the chutes are located.
Q. You say that the stock yards company is the agent
822 the railroad company in the collection of its freights?
A. Acts as its agent in collecting its freight charges
stock.
Q. When do they collect that freight?
A. The stock yards company?
Q. Yes.
A. The freight is collected when the stock is sold or when it
shipped out. The charges may be paid at that time or followed
the road taking the stock out.
Q. Which department of the stock yards has charge of the coll
tion of that freight?
A. Mr. Richardson's department.
Q. Who is he?
A. Secretary and treasurer of the company.
Q. Which is paid first, the stock-yards charge or the railr
charge?
A. Usually paid at the same time.
Q. Suppose there wasn't money enough to pay both, who wo
get it—who would be paid?
A. I suppose the railroads would have to take precedence of
stock yards company, but it would be an unusual thing.
Q. If the stock should not be worth the charges on it, then wo
you prorate?
A. No, sir; not necessarily.

Q. What would you do in a case of that kind?

A. It would be entirely a hypothetical case, because it is not a case that would happen once in a hundred years that stock would not pay the charges on it, because the railroads won't receive stock for shipment without the agent is satisfied that it will pay the freight.

Q. Some of them might do it. Who would get the money if there was only enough to pay one?

A. It would be a question between the stock yards company and the railroad company.

By Judge HORTON: I suppose he does not know if it never occurred.

By Mr. LITTLE: He can say he don't know.

A. I don't know.

Q. It never did occur, to your knowledge?

A. No, sir.

Q. Is the stock yards company paid anything by the railroad for this service, for collecting this freight?

A. I don't understand the question.

Q. You say that Mr. Richardson's bureau collects the freight for the railroad company, as its agent, was the expression you used?

A. Yes.

Q. Does he get paid anything for that service?

A. The stock yards company makes a charge of fifty cents a car, which covers all the expense to the railroad company. That
823 charge of fifty cents a car includes the furnishing of chutes and facilities for taking the stock off from the car, the responsibility of its care, and the labor, with the transaction of the collection of the freight charges and responsibility to the railroad company for that service.

Q. The stock yards company gets fifty cents a car from every railroad company on every car that goes into the stock yards?

A. Yes; a uniform charge.

Q. Suppose that the stock is reshipped and not sold at all?

A. Well, the railroad company pays the stock yards company fifty cents a car for unloading it.

Q. Anyway?

A. Yes, sir.

Q. Now, how long has this arrangement been in vogue?

A. Well, the original yards, or a small part of them, were feed-yards belonging to the railroad company. At that time, as I understood it, they did all of their own work in the handling, unloading, and loading of stock, and collection of freights, and so on. Before that time each ran its own feed-yard. As a matter of economy, they were united into one yard, and from them the present company bought the yards as they existed then, and offered to do this service for the price of fifty cents a car for unloading and fifty cents a car for loading. Each of the railroad- accepted the proposition, as it was economy for them to do it. They couldn't do the work themselves for that money, but by uniting it altogether it could be done at a profit.

Q. When did this company buy the railroad yards?

A. In 1871, I think, the present company was organized. That is my understanding of the way things were fixed.

Q. Do you charge the companies that have their own tracks and use them the same as you do the companies which use your tracks?

A. Yes; a uniform charge.

Q. This Missouri Pacific land that is in there, would that be of any use for any other purpose?

A. It could be utilized for railroad tracks, or for other business, for that matter.

Q. Do you suppose anybody would use it for any other purpose?

A. That would be a good location for a packing-house right in there or for any other purpose in the way of trade.

824 Q. Is it big enough for a packing-house?

A. I think so.

Q. Are there any facilities for getting into it so that it could be used for packing-house?

A. They have tracks right alongside of it.

Q. That is, if the railroad company would allow them to?

A. You asked me if the piece of ground could be utilized for railroad or packing-house purposes.

Q. You say you have been with this company since 1880?

A. Yes, sir.

Q. Where were you before then?

A. I was in Colorado before I came here.

Q. You didn't come here from Boston?

A. No, sir.

Q. You are not from Boston?

A. No, sir.

Q. I think your figures show here that about half the cattle and considerably more than half the hogs that are shipped into these yards are sold to the local packing-houses. Am I correct?

A. Yes, sir.

Q. Now, hasn't that the greatest influence in determining the price of stock here—the local packing-houses?

A. Well, it undoubtedly enhances the value of the market, although it is only one feature of the market.

Q. That and the competition with other markets?

A. The competition of other buyers with the buyers for the packing houses. There is a class of buyers that buy stock for feeding purposes. Large numbers of our cattle are sold and go right back into the country to be fed again, and the buyers for other markets is another branch of the buying.

Q. I notice some stock shipped in from Wisconsin, Minnesota, and Alabama, I think. What is done with that stock?

A. That is mainly stock that is sold for feeders. Some of it may have been for beef.

Q. Brought here to be sold and taken out again to feed?

A. Yes.

Q. All of it?

A. The principal part of it. There may have been a small percentage of it that would be used for beef purposes.

Q. How long does stock ever stay in the yards?

A. That is a hard question to answer; usually one day.

Q. What percentage of it is there just one day?

A. I should say that, perhaps, 90 % of it—not quite so large as that; between 80 and 90 *% per cent.* is there one day.

Q. Would you allow a man to bring his own feed in there and feed his stock?

A. No, sir.

825 Q. Would you allow anybody to go in there and sell feed?

A. No, sir.

Q. There has been a considerable discussion about what the effects were on the market of feeding and watering cattle. Is it not a fact that every buyer takes into consideration how lately stock has been watered and how much water they have taken before he buys them?

A. It is the usual practice for the seller to fill his stock before he offers it for sale.

Q. How long before?

A. Immediately before selling it; before offering it.

Q. You say the stock comes in between four and five o'clock in the morning?

A. Yes.

Q. Is that the rule?

A. Yes, sir.

Q. When do they feed?

A. Usually as soon as the stock arrives.

Q. Immediately?

A. Yes, sir.

Q. When do they water?

A. It is usually before the market opens up, if the stock is there. If the stock is in the yards, comes in during the night or morning, they turn the water on between 6 and 7 o'clock and have it ready for the usual time.

Q. They water as soon as they feed?

A. Yes, sir.

Q. Doesn't it sometimes happen that the buyer says, Water that stock and see how it will take water, before they begin to dicker?

A. I would not be able to say as to that because I don't sell the stock.

Q. Is it not a fact that every buyer for a packing-house gets a return every day showing how the cattle which he bought dressed out?

A. Yes, sir.

Q. And he is guided by it?

A. Yes, sir.

Q. So that any increase of weight due to water is always discounted by the stockman's knowledge of how much water the stock has taken?

Q. Of course the feeding and watering is entirely at the option

of the owner and not of the buyer. The owner, as I say, aims to put his stock in the very best possible condition before offering it for sale, the same as a merchant would put his goods in the most attractive form. It often happens that stock is in the cars for a long time and comes into the yards looking gaunt, and its looks are very much improved by feeding and watering. It not only adds to the
826 weight of the stock, but adds to its actual value in looks.

Q. Is it not the business of buyers to know just how much is added to the apparent value of stock by water; for instance, do not buyers occasionally buy stock right at the cars before it is fed and watered?

A. Only occasionally.

Q. Is it not a fact that it is part of his business to have enough familiarity with stock to know what the result of watering is?

A. Yes.

Q. He must be familiar with its value when it is filled and before it is filled, and he takes into consideration its apparent value after being filled?

A. Yes, sir; that is the custom.

Q. And he discounts any advantage that might be gained by the watering?

A. It is usual to feed and water; that is entirely optional with the owner and is not done at the request of the buyer at all.

Q. But if the shipper should endeavor to give to his stock an apparent value, which they did not possess, by watering them, wouldn't the buyer be able to relieve himself of any disadvantage of that kind against him and get at the actual value of the stock *was* without the filling?

A. Stock does not always fill the same. I have known cattle to vary as much as 50 pounds in the amount they would drink; some cattle will increase their weight 75 pounds to the head. I have known actual cases, and I have also known cases where they would not fill more than 30 or 40 pounds to the head.

Q. Is it not a fact that buyers frequently say, Here, fill up your cattle and let us see how they will take water?

A. I don't know that I heard anything of that kind.

Q. How many of these 411 chutes are in Kansas, Mr. Rust?

A. I think 53 or 54 of the 411 are in Missouri; the balance are in Kansas.

Q. Are any sheep unloaded in Missouri?

A. A small percentage may be unloaded in Missouri at these 53 chutes. They are used in common for all classes of stock.

Q. Are there any sheep yards in Missouri?

A. No.

Q. Are there any hog yards in Missouri?

A. No; all in Kansas.

Q. What percentage of the cattle yards are in Missouri?

A. I should say that about one-half of the cattle capacity is in Missouri.

Q. You use them indiscriminately?

827 A. Yes, sir; we make no account of the State line, as a matter of fact.

Q. As a matter of fact, do you know which side is used the most by cattle?

A. Only approximately. We have in our native division six sets of cattle scales, three of which are in Kansas and three in Missouri. These scales will average along about the same in the number of head weighed, so that, without getting at the actual figures, I should say about one-half are weighed in one State and one-half in the other, as nearly as I could express it.

Q. Where are the horses and mules kept?

A. Entirely in Missouri.

And in answer to redirect interrogatories propounded to him by Hon. A. H. Horton, counsel for the complainants, the witness testified as follows, to wit:

Q. He asked you about the filling of cattle. To your recollection did you ever know of a buyer telling a man to fill his cattle before he bought them?

A. No, sir.

Q. In all your experience?

A. No, sir.

Q. If the shipper or owner wants to sell his cattle without feeding or filling can he do so?

A. Yes, sir.

Q. What did you say was the amount of difference in the amount of water cattle would take?

A. They vary in weight from 30 to 75 pounds or more.

Q. When cattle are brought to the yards and sold in the morning, state whether it is necessary for their nourishment and for their health that they should be fed and watered before being sold.

A. No, sir; it is not.

Q. They spoke about the railroad charge that you make of 50 cents a car. State whether or not that is a fair and reasonable charge that you make to the railroad companies.

A. Yes, sir; that is a lower charge than the railroad companies could perform the same service for themselves.

Q. What I want to know is whether it pays the company for the services it performs.

A. Yes, sir; it is considered a fair charge.

Q. You spoke about traders keeping animals there and buying feed for them. State whether or not they pay any yardage at all.

828 A. No, sir; they do not.

Q. What compensation do the traders pay for all the services and privileges rendered to them?

A. Simply from the amount of feed.

Q. You spoke about the record of 1890 as to hogs. Do you know anything about the corn crop of 1890 or 1891?

A. No, sir; I do not. I am not familiar with the statistics of the corn crop.

Q. Do you know whether the receipts in the yards depend in any way upon the corn crop of Kansas?

A. I could not answer that question intelligently. Of course, in a general way I know.

Q. They asked you about the charge for yardage being 20 cents at a certain time. To what time was that charge made?

A. 1893, I think. I think that was the time the yardage on cattle was increased.

Q. Which class of stock pays the largest amount of yardage?

A. I never figured it out.

Q. Not the general amount, but per head.

A. Cattle pays the largest yardage.

Q. State, since the yardage has been increased, what particular class of stock has increased going into the yard.

A. Cattle.

Q. Tell the court why that change was made; what was the reason of it.

A. I may not be able to give all of the reasons. The yardage charge, of course, is fixed by the management. My judgment is that it was the increased cost and the competition.

Q. Tell just what you reported to the management; not what they did.

A. My report to the management was that our having a lower charge for yardage of cattle was a detriment to the market, founded on the fact that in our competitive territory, principally in Texas, dealers and operators there said to me at different times that they did not regard our market of as much value as the other markets from the fact that if it was as good we certainly, as business men, would charge as much for the use of it as the other markets.

Q. I do not care to go into your discussion. State whether or not after that the condition of the yards has been improved—since the time you say the yardage has been increased 5 cents.

A. I was going to finish up by saying that, in my judgment, in talking with the management, I thought it would be good
829 business policy for the company to increase its yardage charge to the basis of the other yards and to use that money in bettering our service in the way of facilities.

Q. State whether or not since then the conditions and the service has been improved.

A. Yes, sir; very much.

Q. You spoke about the quarantine grounds being floored. State whether that is new or old flooring.

A. Part of it has been there some time, part of it is new. We keep it in good, serviceable condition, you understand.

Q. I mean, as you are renewing your floors, what material are you now using?

A. We are using brick; part of the pens and alleys in these yards have been bricked.

Q. Was there any of this brick pavement in use before this increase in the yardage charge was made?

A. No, sir.

Q. They asked you about the packing-houses being extensive buyers and assisting the markets. What other classes of buyers come to this market?

A. We have a class of buyers known as order buyers; we have export buyers, who buy stock to be shipped to foreign countries, and we have buyers for packing-houses located at other points.

Q. How recently have these buyers been upon this market?

A. It has been comparatively recently.

Q. Well, how recently?

A. Well, since 1890 our growth has been most pronounced in inducing that class of buyers to locate here.

Q. And since the establishment of what packing-houses?

A. Since the establishment of the Swift Company and Schwarzschild & Sulzberger Company.

Q. About how many years has it been since Schwarzschild & Sulzberger Company came here?

A. The growth of our export business has been mainly since that company located here; in 1893, I think it was.

Q. You spoke about the U. S. inspecting officer, and they asked you whether he had anything to do with the condition of the yards or the maintenance of them. Has he anything to do with the condition in which they are kept?

A. Only in regard to cleanliness and disinfecting.

Q. Who has to pay the costs and expenses of carrying out his orders?

A. The stock yards company.

830 Q. Is that included in the charge and yardage of the company?

A. Yes, sir.

Q. Do you know of any other forms they have in use in the yards in carrying on the business except these particular papers which you have here?

A. I think these cover the general papers used in the transaction of the business; there may be others that are not included in these papers.

Q. You spoke about the largest receipts of hogs being in 1890 and 1891. State whether there has been any increase in the price of yardage of hogs since that time.

A. No, sir.

Q. And yet, as a fact, you stated that the receipts of hogs have decreased since that time?

A. They have decreased in number since that time.

Questions by the MASTER:

Q. With reference to the dealings of these traders in the yards, I understood from your answer that the stock yards company receives no compensation from the traders except in the profits which are derived from the sale of feed?

A. That is correct.

Q. So that if a trader should purchase a car-load of cattle this morning and within ten or fifteen minutes thereafter should make

a sale to some purchaser, the stock yards company would receive no benefit from that transaction and the trader would be out nothing?

A. Yes, sir.

Q. And the difference between his purchase and selling price represents the profit he makes on the transaction?

A. That is correct.

And in answer to further cross-interrogatories propounded to him by Mr. Boyle, attorney general, the witness testified as follows, to wit:

Q. You charge 25 cents per head for cattle from the time they come into the yard until they are sold?

A. There is but one charge of 25 cents per head.

Q. So it don't make very much difference about the traders' intervention in the matter, so far as yardage is concerned, because if the original owner had retained the stock the company would have received no additional compensation?

A. None whatever.

831 Q. Did you ever hear of a buyer telling a shipper not to feed and water his cattle before he bought them?

A. No, sir; I don't remember that I have ever heard a buyer say that.

Q. Do you know what the daily receipts of the stock yards company are?

A. In dollars and cents?

Q. Yes.

A. No.

Q. Do you know what its profits are?

A. No, sir.

Q. Do you know whether the company could have made these improvements on a basis of 20 cents for cattle?

A. I do not.

Q. One of the reasons that you reported why the rate should be raised was because you were performing the service cheaper than somebody else?

A. No; my recommendation to the company was that it increase the rate and give better service.

Q. Wasn't it also because the shippers around the country were a little bit suspicious of this company because it was doing its work a little cheaper than somebody else?

A. That was its reputation in the territory tributary to other markets—that is, in competitive territory.

Q. You really had fine stock yards?

A. We had fair yards, but not the conveniences we have now.

Q. You had the chutes and the bridges, the quarantine yards, and you had the Exchange building, but you didn't have the brick floors. That is a modern evolution, the brick floors. What other improvements have you now that you didn't have then?

A. We have more chutes.

Q. Is that because of the increase of business?

A. Partly.

Q. What else?

A. We have a system of overhead viaducts—about a mile and a half of overhead viaducts to facilitate the movement of stock; we have more and better facilities where stock can be handled more quickly.

Q. That is all due to the increased yardage on cattle?

A. I do not say it is all due to that fact, but I do say that we give better service since the yardage was increased that we did previous to that time; that is what I am getting at.

Q. Didn't they give better service in 1890 than they did in 1880?

A. No; I don't think so; about the same.

Q. Did they give any better service in 1880 then they did
832 prior to that time, we will say?

A. I am unable to tell, because 1880 was the beginning of my time.

Q. The stock-yards business did not increase from 1880 to 1890?

A. Our cattle business has increased more rapidly since 1890 then it did before.

Q. But I say it did not increase at all from 1880 to 1890?

A. I — the business grew; yes, sir.

Q. But the stock yards did not grow; they did not extend out very much, did they?

A. Yes, sir; to some extent.

Q. Haven't you put all your improvements on the land since 1890?

A. We have bought perhaps more since 1890 then we did between 1880 and 1890, but between 1880 and 1890 we added to our capacity by buying more land and making improvements, but not on the scale that we have since that time. That is my recollection of it.

Q. Your theory is that to reduce the price of yardage will injure the yards, because shippers won't want to come to the yards where they can get cheaper service, but will want to go where they will pay more for the same service?

A. No; not at all.

Q. You do not mean to say that?

A. I mean to say this: that the shippers will go to the market which offers the best service for the least money. I do not think, for instance, that the difference between 20 and 25 cents in the yardage charge would cut very much of a figure in changing the course of cattle from competitive territory. Our business, as a matter of fact, has increased almost entirely from competitive territory since 1890 and 1893.

Q. But you do not attribute that to the raising of the price from 20 to 25 cents?

A. I attribute it not to the fact of the price of yardage being raised, but I do attribute it to the fact that the company has offered better facilities and a better market.

Q. You do not make any connection between the change from 20 to 25 cents and these better facilities, do you—that is to say, you

do not mean to tell the court that the company could not have made these improvements on the 20-cent rate, do you?

A. No; I do not. I know this as a matter of fact. We have given better service and offered a better market then we did previous to that time.

833 Q. Then if you could offer as good service for less money, that would attract trade, too, wouldn't it?

A. Certainly; it is the service and the market that draws the trade.

Q. Then you do not want to leave the inference that your stock yards were being injured because you were charging less yardage than some other stock yards?

A. I mean to say that it was an injury to our market in sections of the country that *it* competitive to other markets, for instance, in Texas.

Q. Why would any prejudice be created if you did not charge as much as the other markets?

A. Shippers would say, if our market is worth as much as the other markets, you would naturally charge as much as the other markets. That prejudices men against your market.

Q. That was one — the things which caused the raising of the price?

A. I presume it was. That was my recommendation to the company.

By Judge HORTON: Had these parties who told you this been patrons of your yard before?

A. No; their business was mainly in Chicago and St. Louis.

834 And in answer to cross-interrogatories propounded to him by E. C. Little, counsel for the defendant L. C. Boyle, as attorney general of Kansas, the witness testified as follows, to wit:

Q. If you should raise the yardage charge to thirty cents, would that increase your patronage?

A. Not necessarily.

Q. Would it?

A. I think not.

Q. What do you regard as competitive territory?

A. We regard all country, probably all the territory tributary to Kansas City, as competitive, but when I spoke in this particular instance I referred mainly to Texas.

Q. All of your territory is competitive?

A. To a certain extent.

Q. What competitor have you for the Kansas and Missouri trade?

A. At Omaha on the north, Denver on the west, and you might class Wichita, if it got on to its feet, St. Louis and Chicago.

Q. Who are your principal competitors?

A. We have three principal competitors, Omaha on the north, St. Louis on the east, and Chicago on the east.

Q. You say a man don't have to buy feed from you; he can ship in his cattle in here by paying only the 25 cents yardage.

A. He don't have to pay that; he can ship his stock in here, and if it is shipped out without being sold he does not pay us a dollar.

Q. That is because you don't give him a market, don't do him any good? Mr. Child was right about that?

A. Yes.

Q. But if a man pays the 25 cents yardage, you don't require him to buy anything; he doesn't have to buy any feed?

A. No, sir.

Q. Now, suppose a fellow comes in there and does not feed his cattle, would you lose money on him?

A. Doesn't pay the yardage?

Q. He pays the yardage, but he doesn't feed; would you lose money on him?

A. I should say if there were very many of them we might do so; of course, a large part of our profits come out of our feed.

Q. How many cattie have you facilities for handling?

A. Our nominal capacity is for 22,000 head.

Q. And 90 % of them, you say, average a day in the yards?

A. Yes; I should say so.

835 Q. Nine-tenths of that 22,000 at 25 cents a day; would you lose money? Suppose 22,000 head of cattle were brought into the yards and stayed all day and paid the 25 cents, but didn't buy anything, would you lose money?

A. I could not answer that question.

Q. You say a trader can buy stock and can keep it in the yard as long as he wishes without paying anything?

A. Yes, sir.

Q. If the 25 cents is once paid?

A. Yes; the yardage charge is collected when the stock is sold.

Q. And the trader keeps the stock there on the yardage that has been paid?

A. Yes, sir.

Q. You let him keep them there as long as he ... ts to?

A. Yes, sir.

Q. You would let a trader keep them there a year?

A. Yes, sir.

Q. If a man should keep his stock there a year and didn't pay any yardage, you would lose money, wouldn't you?

A. I presume we would; it is not customary to keep stock that long.

Q. If he kept them there that long, of course he would have to feed them and would have to pay a dollar a bushel for corn and a dollar a cwt. for hay. You would lose money if a man should keep his stock there that long, wouldn't you?

A. There would undoubtedly be a profit on the feed, but whether it would be sufficient to carry on the company I don't know.

Q. You don't know whether you could afford to make a feeding yard of it at the prices you charge?

A. No, sir; I do not.

Q. You don't know whether you could afford to make it a standing yard at 25 cents a day?

A. No, sir.

By Judge HORTON:

Q. Is it customary for anybody to keep cattle there a year?
A. No, sir.
Q. Is the company engaged in any such business as that?
A. No, sir.
By Mr. LITTLE: Could any trader afford to keep them there?
A. No, sir.

By Judge HORTON:

Q. You say a trader has the right to stay there as long as he pleases. He can leave there any time he pleases, can he?
A. Yes, sir.
Q. Doesn't the shipper have the same opportunity, if he wants to stay?
A. Yes, sir.
836 Q. He don't have to pay any yardage but once?
A. The same rule applies to all people who do business there, whether shipper, trader, or anybody else.
Q. As to the financial condition of the company and its expenses, you have nothing to do with them?
A. No, sir.

By Mr. BOYLE:

Q. How do you know that the largest portion of the profits of the yard come from feed?
A. I didn't intend to answer it that way. I say a large proportion of the profits come from the feed.
Q. Do you know that they make any profit on feeding?
A. Only in a general way.
Q. You know if they buy corn for ten cents a bushel and sell it for a dollar a bushel, they make a profit, don't you?
A. Yes, sir.

By Judge HORTON:

Q. He asked you about buying corn for ten cents a bushel and selling it for a dollar a bushel. Is the company engaged simply in the business of selling corn and hay? When it sells corn and hay, is it simply the corn and the hay that they sell?
A. No, sir.
By the MASTER: I think that has been sufficiently gone over.

By Mr. LITTLE:

Q. You testified, I believe, that the wages and salaries paid by the company are not excessive, did you not?
A. Yes, sir; I think they are fair and just.
Q. As compared with other wages?
A. Yes, sir.
Q. For instance, do you know what the brakemen get who run into that yard?
A. In a general way.

Q. How do their wages compare with yours today?

A. Doing the same work I should say they are perhaps the same.

Q. Do you know how your wages compare with those of other men of similar ability and industry and working similar hours?

A. In a general way our scale is higher.

Q. I don't want it in a general way. How do your wages compare with those of the packing-house employés?

A. I could not say because I don't know what their wages are.

837 Q. Do you know what wages are paid to the employés of the street railway companies?

A. Yes.

Q. How do they compare with your wages?

A. I think they are lower.

Q. For instance, what do the motormen get?

A. I think their wages run about sixty dollars a month.

Q. They are not lower than your wages?

A. They perform more hours labor.

Q. How many hours do your men work?

A. From nine to ten.

Q. A day?

A. Yes, sir.

Q. Do they work in sections or in gangs?

A. Yes, sir.

Q. What time in the morning does the first gang begin?

A. We had better commence in the evening. The night gang goes to work at half past five, then there are 25 or 30 men who go to work at 5 o'clock in the morning.

Q. The first crew begins at 5.30 in the evening?

A. Yes, sir.

Q. How long do they work?

A. They work until 6.30 the next morning.

Q. How many hours is that?

A. That is 11 hours, but understand they don't work all the time.

Q. What do they do?

A. A portion of that time there is nothing to do.

Q. Do they go to bed?

A. They are divided into sections. One section is first on duty one night and the other section is on duty the next night, and all the time they are watching about the yards for stock to come in. If there is more work to be done than they can do they call the other half.

Q. Where is the other half?

A. Right in the yards on duty.

Q. When does the next gang go to work?

A. At 5 o'clock in the morning and work until two or three in the afternoon.

Q. How many hours do they work?

A. About nine hours.

Q. Are they on duty any longer than two or three?

A. Not on an average; sometimes. Sometimes we let them off at noon.

Q. If there is nothing to do?

A. Yes, sir; and if there is anything to do we keep them until one or two or three o'clock.

Q. And the other fellows go on at 5.30?

A. Yes, sir.

Q. Is there an interim there when there is nobody on duty?

A. No, sir.

838 Q. Who is on duty in the interim?

A. There is no interim; the force of men that goes to work at 6.30 in the morning works until the night force comes in the evening; there is another force that goes to work at 8 o'clock in the morning and works until four or five in the evening—weighmasters, clerks; such a force as that.

Q. Who get the biggest salaries?

A. Not necessarily.

Q. They get bigger salaries than the fellows who work 11 hours. There are two big gangs who work 11 hours each?

A. The night force is a comparatively small force.

Q. My question is, are there not two gangs who work 11 hours a day; is that right or am I wrong?

A. How is that?

Q. Are there not two gangs of your men on duty 11 hours a day?

A. Well, there is a small gang.

Q. How many in each?

A. About 12 to 15.

Q. And in the day force; how many in the force that goes to work at 6.30 in the morning?

A. That is the bulk of the men.

Q. How many of them?

A. I could not tell.

Q. The bulk of all the men?

A. Yes, sir.

Q. How many hours a day do the street-car men work?

A. 12, I understand.

Q. How many hours a day do the men work in the shops and packing-houses?

A. I understand they work ten hours.

Q. Do you know how much grocery clerks are paid?

A. Only in a general way.

Q. Your opinion that you pay higher wages is simply in a general way?

A. Yes, sir.

Q. You really don't know specifically?

A. I know it only in a general way as I know many things in a general way. I can get a man to work around my house for a dollar and a quarter or a dollar and a half a day. We have men down there at $1.75 a day to do practically the same class of work.

Q. You think the men you pay $45 a month are the same class of men you hire for $1.25 a day?

A. No; they would not be considered the same class of labor I referred to.

839 By Judge HORTON:

Q. Do the men who work at nights work incessantly?

A. No, sir; only a portion of the time.

Q. Is there any great difference between the work of the motormen and of your men?

A. A great deal of difference; the motormen have to be doing hard work all the time, while our men have a good part of the time, at least one-half of the time, when they are resting and have nothing to do. A good deal of the time we cannot give them employment and we let them off early in the afternoon after the market closes and the shipping closes.

Adjourned until 2 o'clock p. m.

840 FRIDAY, *May* 21, 1897—9 a. m.

EUGENE RUST, a witness heretofore duly sworn on behalf of the complainants, upon being recalled for further direct examination by Mr. Hite, testified as follows, to wit:

Q. Have you any data by which you can testify to the number of cattle and calves received by the Kansas City Stock Yards Company in 1896 that originated below the quarantine line?

A. I have.

Q. Will you please state to the master the number of cars of cattle received by the stock yards in 1896 originating below and south of the quarantine line?

A. My memorandum covers the quarantine season from the fifteenth of February until the fifteenth of November, 1896; between the fifteenth of November and the fifteenth of February I have no memorandum. We unloaded 11,675 car-loads.

Q. How many cattle were contained in those cars?

A. 302,568.

Q. How many calves?

A. 35,324.

Q. You are now testifying to the receipts of such cattle during the period when the quarantine regulations of the agricultural department were in force, are you not?

A. Yes, sir.

841 Q. Were all of these cattle sold in Kansas, Mr. Rust?

A. No; all that were sold in this market were sold in Kansas; some of them were forwarded.

Q. About what proportion of the whole number that you have testified to were not sold in this market?

A. To the best of my judgment about five per cent.

Q. Then am I to understand that about ninety-five per cent. of

the cattle concerning which you have just testified were sold in the Kansas City stock yards market in Kansas?

A. Yes, sir.

Q. From your knowledge of the handling of cattle, their sale and delivery, Mr. Rust, please state the history, as well as you can, of a car of cattle originating below and south of the quarantine line, and handled, delivered or shipped by the Kansas City Stock Yards Company.

Q. The cattle come to us here and are delivered to us by the railroad company bringing them to this point; they are unloaded in the chutes designed for handling that class of stock by the stock yards company, placed in our pens, and in case of sale they are weighed by our employés, and if sold to be slaughtered they are delivered to the employés of the firm to whom they are sold. The delivery is made in Kansas to such employés by the employés of the stock yards company, and are driven by the employés of the purchasing firms through our alleys and over our bridges and viaducts, and through our tunnels, until they reach the outside limits of our yards, and are thence driven to the different houses.

Q. State, Mr. Rust, whether a purchaser of such cattle as you have just mentioned has any other means of conveying
842 those cattle to other places—to their places of destination or slaughter after the sale is made in Kansas.

A. Well, they can either be driven or shipped out by rail.

Q. Under the circumstances and conditions attending the operation of your business, are the chutes, alleys, tunnels and bridges which you have mentioned, the means employed by purchasers for the delivery of the stock after it is sold to be slaughtered or shipped?

A. Yes, sir.

Q. Are they the only means?

A. Yes, sir.

Q. To get that matter clear: am I to understand that the purchasers of the cattle, concerning which you have testified, are, from the conditions and circumstances attending your business, compelled to use these alleys, tunnels, chutes, driveways and other instrumentalities owned and controlled by the stock yards company?

A. Yes, sir.

Q. That is the fact, is it?

A. Yes, sir.

Q. Have you any data or information from which you can testify concerning the disposition of stock handled by the Kansas City Stock Yards Company during the year 1896?

A. Yes, sir.

Q. Will you please state to the special master, as nearly as you can from the data you possess, the disposition by the number of head of stock, dividing them into cattle, calves, hogs, sheep, horses and mules, that occurred in 1896? Have you testified concerning this matter before?

A. Yes, sir.

Q. Have you any data or information from which you
843 can testify concerning the different persons to whom stock was sold, and the residences or locations of such persons during the year 1896?

A. Yes, sir.

Q. What does the letter "B" in this statement mean?

A. It means dead animals and animals condemned by the Government.

Q. How many cattle were purchased by Dold & Son in 1896 for use at their packing-house in Kansas City, Missouri, in 1896?

A. 35,511.

Q. How many hogs?

A. 309,613.

Q. How many sheep?

A. 15,275.

Q. How many cattle were purchased by P. D. Armour? Where does he live?

A. In 1896 he purchased 2,415 cattle.

Q. To what point were they shipped?

A. To Illinois; Chicago, mainly.

Q. Did a person by the name of Balling purchase any cattle?

A. Yes.

Q. Where does he live?

A. I don't know his residence or the residences of the buyers; this is the designation of the points to which they have shipped during the year.

Q. Did one Balling buy any cattle?

A. Yes, sir.

Q. For shipment?

A. Yes, sir.

Q. How many?

A. 3,916.

Q. Where were they shipped to?

A. Partly to Ohio and to other States.

Q. States other than Kansas?

A. Yes, sir.

844 Q. Did the Cudahy Company buy any cattle in 1896?

A. Yes, sir.

Q. How many?

A. 39,860.

Q. Where were those cattle shipped to?

A. To Nebraska.

Q. Did they buy any sheep?

A. Yes, sir.

Q. How many sheep?

A. 20,644.

Q. Where were those sheep shipped to?

A. To Nebraska.

Q. Did J. E. Cole buy any hogs?

A. Yes, sir.

Q. How many hogs did he buy?

A. 81,525.
Q. Where were those hogs shipped to?
A. Mainly to Ohio, Pennsylvania and New York.
Q. In addition to what you have testified to concerning the Dold Packing Company, did they buy any other stock?
A. Yes, sir.
Q. How many hogs did they buy?
A. 9,898.
Q. Where were those hogs shipped to?
A. New York State.
Q. State whether Eastman Company purchased any stock.
A. Yes, sir.
Q. What amount of cattle?
A. 51,317.
Q. Where were those shipped?
A. To New York.
Q. Have you examined the statement that you now have in your hand?
A. Yes, sir.

845 By Mr. HITE: I now offer in evidence the sheet of paper identified by the witness as the testimony of the witness concerning the matters set forth upon the sheet, for the purpose of avoiding and obviating the necessity of making interrogatories concerning each item shown thereon. The same is marked Exhibit Q, C. H. N., and returned with this testimony.

Q. Does Exhibit Q correctly state the number and kind of stock handled by the Kansas City Stock Yards Company for the years 1895 and 1896, and the disposition of such stock, with reference to the individual persons to whom it was delivered or sold, and the geographical location by States of such persons, except the horses and mules handled by the Kansas City Stock Yards Company in the years named?
A. Yes, sir.
Q. What is meant by the absence of any locality after the names given in the first part of this exhibit, under the head of "local packers"?
A. Those designations are for stock that is delivered to the city; these packing-houses are located in the city. The designation of "local butchers" are butchers who have driven the stock out of the yards, and slaughtered it in the city or near here. The designation "feeders" is for stock that is bought for feeding purposes, and is driven out of the yards into local territory.
Q. Driven out as distinguished from being shipped out in cars?
A. Yes; this designation "B" covers dead animals and animals that may have been condemned by the Government inspectors; all animals that have either died or been crippled and taken from the yards.
By Mr. DANA: That are not fit for meat purposes?
A. Yes; or feeding purposes.

Q. Now, what is intended to be meant by the term "feeders" in the lower subdivision of the paper?

A. That was made to designate the number shipped to feeders, but the next item following "other shippers" embraces that item. It embraces the item of stock shipped to the country as well as to local points, maybe for slaughter.

846 Q. By feeders do you mean cattle that are driven out on the hoof?

A. In the first section the designation "feeders" means stock driven out on foot. In the regular shippers the terms "feeders" and "other shippers" is the number shipped on the cars, by rail.

Mr. Hite again offers Exhibit Q for the purposes stated. Received without objection.

Q. Mr. Rust, please state what is done in and about the delivery of cattle for shipment, for instance, to Dold & Company, in New York.

A. When stock is purchased by them for shipment the parties from whom they purchase it give them a title orser to the stock when it is paid for and they in turn deposit that title orser with the stock yards company, together with an order directing the stock yards company to load that stock on a particular line of railroad; they give in that shipping order the location of the stock in the yards, the number of the pen, the number of head to the car, and its destination; that is the substance of it.

Q. Now, Mr. Rust, are the alleys, tunnels, driveways, viaducts, and other means of egress used and ow-ed and operated by the stock yards company used by the purchaser in the case to which your attention has been called of the Dold Packing Company?

A. Yes, sir.

Q. Are they the only means by which this purchaser can convey these cattle or other live stock from the pen or yard where they were purchased to the shipping point to be loaded into the railroad cars?

A. Yes, sir.

Q. Please state whether or not the railroad tracks belonging to the Kansas City Stock Yards Company are used in and about the receipt, handling, and delivery of stock as in the case of the Dold Packing Company.

A. Yes, sir.

Q. Is the manner which you have described of the handling, delivering, and driving of stock for the Dold Packing Company the ordinary and usual manner in which stock is handled and delivered by the Kansas City Stock Yards Company to other purchasers for shipment from the yards?

A. Yes; I should add, however, that after receiving the shipping order from the Dold Company or any other shipper the yards company takes the stock from the pens to the chutes and loads it into the cars.

847 Q. Is that actual work of handling and delivering into the cars for shipment conducted by the stock yards company?

A. Yes, sir; entirely so.

Q. In what capacity, with reference to the railroad company or the shipper, does the stock yards company act?

A. It acts in the capacity of agent for the railroad company in handling their business.

Q. In order that we may be clear about this, Mr. Rust, suppose one hundred head of cattle were purchased by Dold & Company in Kansas, and that the cattle were ordered by the purchaser to be shipped to New York, am I to understand from your previous answer that the stock yards company acts as the agent of the railroad company in taking these cattle from the place of their sale through its chutes, alleys, tunnels, viaducts, and along its tracks to the chute connecting with the railroad car and does the actual work of delivering the cattle into the cars as the agent of the railroad company?

A. Yes, sir.

Q. About what proportion of the cattle, exclusive of those that are designated as quarantined cattle, are yarded in Missouri?

A. In my direct testimony the other day I was asked practically the same question, and I gave it then as my opinion about one-half. Since that time I have investigated the matter somewhat, and I am satisfied that of the native cattle there are about two sold in Missouri to one in Kansas.

Q. Does that mean that about two are yarded in Missouri to one in Kansas?

A. Yes, sir; of the native cattle.

Q. Referring to Exhibit Q, I observe the words, "Shipped first hands." Please indicate to the special master what that means.

A. That means the number that were shipped without being sold on this market.

Q. Am I to understand by that that those are cattle that went through here on through billing?

A. Frequently, not altogether; it might have been billed locally and then rebilled from here to other destinations.

Q. With reference to those cattle that went through here on through billing, please state to the special master the history of one of such cars as an illustration of the history of all of such cars, with reference to the handling, keeping, feeding, delivering, and shipping of them, so far as the Kansas City Stock Yards Company had anything to do with it.

A. They would be handled just the same as cattle put on the
848 market here, except that they would not be weighed and sold.

Q. I understood you to say the other day, Mr. Rust, that nearly all of the railroads delivering cattle into the yards deliver their cattle in Kansas?

A. Yes, sir.

Q. Now, suppose a car of cattle were delivered by one of these railroad companies where the cattle had been shipped on a through billing to a point other than Kansas City, lying outside of Kansas, and such a car had been delivered in Kansas; please state whether

or not the alleys, driveways, chutes, tunnels, viaducts, or tracks of the Kansas City Stock Yards Company would be used in the handling, delivering, or shipping, or sorting of such cattle.

A. Yes, sir.

Q. In the use of these facilities and instrumentalities to which I have just called your attention, in what capacity, with reference to the railroad company, would the Kansas City Stock Yards Company act?

A. As the agent of the railroad company delivering the stock to us.

Q. A little while ago you said something about native cattle. Please state what you mean by native cattle.

A. In the common acceptation of the term native cattle means cattle originating north of the quarantine line.

Q. Am I to understand that you mean by that all cattle not yarded in the quarantine pens?

A. Yes, sir; although I should qualify that by saying that it embraces all classes of stock that are considered safe. The Government establishes a quarantine line for cattle. Below that line we designate them as southern cattle, and all cattle north of that line as native cattle, although they may not be native to the State of Kansas or Missouri. It is simply a designation to distinguish the two classes.

Q. Well, in order to make that point perfectly clear, I will ask you if in order to get at the number of native cattle it would be proper to deduct from the whole number of cattle handled those which are yarded in the quarantine yards.

A. Yes, sir.

Q. The result would be what you term the native cattle?

A. Yes, sir.

Q. In this statement marked Exhibit Q, under the heading "Cattle," are calves included?

A. Yes, sir.

Q. Then we are to understand by the term "cattle" in
849 Exhibit Q calves are embraced?

A. Yes, sir; cattle and calves.

Q. In the disposition of cattle—that is, with reference to what pens they shall be put into—is the stock yards company to any extent guided by the wishes of the shipper or the owner?

A. Almost entirely. The owner or his agent usually designates the particular pens that he wants his stock placed in—that is, not special pens, but special localities, a special block of pens.

Q. Now, calling your attention to this matter of stock shipped from south of the quarantine line, you say that all such cattle when received at the Kansas City stock yards must be, according to the regulations of the United States, placed in the quarantine pens. That is true?

A. Yes.

Q. But, outside of that, do I understand that the wishes of the shipper are consulted?

A. Yes, sir.

Q. Now, calling your attention to a car-load of cattle that originates, for instance, in Iowa—you receive cattle from Iowa, as you have testified?

A. Yes, sir.

Q. When that car-load of cattle is received at the Kansas City stock yards is the wish of the owner or shipper or his agent or the consignee consulted with reference to where they shall be placed?

A. In case the owner or his agent is present and expresses a preference; if not, they are yarded by the employés of the stock yards company in the pens most convenient to the place where they are unloaded.

Q. Am I to understand that the Kansas City Stock Yards Company recognizes the right of the consignee or the owner or shipper, under reasonable conditions, to designate the pens into which his cattle shall be yarded?

A. Yes, sir.

Q. To bring that point out a little more clearly: If the owner of cattle originating in Iowa should ship the cattle to the Kansas City stock yards and his consignee should designate that those cattle should be yarded in Kansas, the Kansas City Stock Yards Company would, subject to reasonable conditions, comply with his wish, would it?

A. Yes, sir. I may explain this: Of course there is a good deal of our stock that is received that is delivered to the owner or his representative right at the point of unloading, at the unloading chutes, and taken by him to whatever part of the yard he may desire. Of course, if he should request that a car of southern cattle be put into the native yards, we could not accommodate him.

Q. Now, with reference to the control over the cattle—what is the fact about that? Are the cattle under the control of the owner or his consignee up to the time of the sale?

A. Yes, sir; in their movement about the yard.

Q. You testified to the number of cattle that are yarded in Kansas and Missouri. I understood you to say that about two cattle are yarded in Missouri to one in Kansas?

A. Yes, sir.

Q. What does that amount to?

A. In 1896 our total receipts were of cattle 1,696,430. Of this number 302,568 were in the quarantine division. Deducting the number received in the quarantine yard, would leave 1,392,862 in the native division, of which approximately 464,621 were yarded in Kansas and 929,241 in Missouri.

Q. Mr. Rust, what are the relative capacities of the yards in Kansas and in Missouri; proportionately, I mean?

A. About one-third in Kansas and about two-thirds in Missouri in the native division.

Q. I believe you said that most of the railroads deliver cattle in Kansas.

A. Yes, sir.

Q. Now, after the cattle are delivered how are they conveyed into Missouri?

A. They are driven through the alleys and over the viaducts.

Q. Now, right at that point, Mr. Rust, suppose that the consignee or the owner or his agent is standing there when the stock is unloaded in Kansas; under reasonable conditions has — the right to ask and require the stock yards company to take his stock into Missouri?

A. Yes, sir; it has been our practice to accom-odate our shippers and patrons in that way, so far as we possibly could. There are times when we cannot always put them into the pens which they designate, but generally we can and do.

Q. I understood you to testify that all of the hogs and sheep are yarded in Kansas?

A. Yes, sir.

Q. None of them get into Missouri. And the horses and mules?

A. Are all in Missouri.

Q. As I understand the matter about the horses and mules,
851 there is only one place where they can be yarded?

A. Yes, sir; we have that division fitted up especially for them—for handling them.

Q. Are you able to state generally the origin of the horses and mules that are shipped to this point?

A. We have such a statement, but I have not it here.

Q. Wherever these horses and mules originate from, are they as a rule unloaded in Kansas?

A. Yes, sir.

Q. It is the invariable practice, as I understand it?

A. You understand that of all our receipts only a small percentage is unloaded in Missouri. The bulk of the stock that is received is unloaded on the Kansas side of the line.

Q. I understand you to say that invariably horses and mules are yarded in Missouri?

A. Yes, sir.

Q. Now, in taking them from where they are unloaded, in Kansas, to where they are yarded, in Missouri, what instrumentalities owned and operated by the Kansas City Stock Yards Company are used?

A. There is only one way, and that is through our alleys and over our viaducts and bridges provided for that purpose.

And in answer to cross-interrogatories propounded to him by Attorney General Boyle the witness testified as follows, to wit:

Q. Do I understand that when a car-load of stock is received by the Kansas City Stock Yards Company the owner or his consignee or agent says that he would like to have it yarded in Kansas or Missouri?

A. No, sir; the State line is not referred to at all.

Q. They frequently indicate that they would like to have their stock yarded in certain pens, and the reason is, as I understand it,

the superior advantage which it gives in selling the stock; is not that true; that it is closer to the market?

A. Yes; I would like to explain.

Q. Do so.

A. It is the custom of the different commission firms to have a certain location in different parts of the yards in which they bunch their stock. By doing that they are enabled to save expenses and time of their help. One salesman may be able to handle 20
852 or 30 or more car-loads of stock in a day if it is conveniently located, but if the stock is scattered all over the territory it would necessitate more salesmen; so that for convenience the commission firms select a certain section of the yards, generally three or four or a half a dozen blocks, where they try to get their stock bunched together.

Q. When you refer to blocks what do you mean?

A. Blocks of pens; we allow them to do that.

Q. That is done regardless of the State line?

A. Yes, sir; they may do it on account of the State line or they may do it for their own convenience; I don't suppose the State line cuts any figure.

Q. Now, Mr. Rust, you spoke about the stock yards company driving the stock to the railroad chutes to be loaded.

A. From the pens; yes, sir.

Q. That work that it does is a necessary and essential part of the running of the stock yards, is it not—that is to say, you couldn't run your stock yards down there if you let every person who bought stock run them out into the alleys when he pleased; it must be controlled by the stock yards company, must it not?

A. Certain rules and regulations must be had and obeyed, but you understand a great deal of this stock is moved by the owners and their agents, the commissionmen.

Q. They are men who are skilled and experienced in the handling of stock, who stay around the yards all the time?

A. They are under our general regulations, you understand; there would be nothing, for instance, to prevent a railroad company from sending its employés there and taking this stock; there would be no objection to a commissionmen taking stock to any part of the yard or taking it out of the yard, but, of course, in doing that, they comply with certain rules and regulations that we have.

Q. As a matter of fact, the men who work for the commissionmen, the men who do this work of moving the stock from the pens to the railroad tracks, are men who are down there and work for the commissionmen practically all the time, are they not?

A. They do not move the cattle to the trains; we do all that loading ourselves; the commissionmen or their helpers do not do that work.

Q. That is to say, your employés move the cattle to the trains?

A. Yes.

Q. That is one of the things which it is necessary for you
853 to do in the running of your stock yards down there and to abide by certain rules that might be necessary for the running of it?

A. That is what the railroad companies pay us the loading charge for.

Q. Could the railroad companies' employés do it?

A. They could, under proper restrictions and regulations.

Q. If they were familiar with the stockmen's methods of handling stock, and so on?

A. Yes, sir; formerly that work was all done by the railroad companies, as I understand it, but the present company, as I understand it, bought the yards and organized the yards in their present form. It was previously a union yard, and the employés of the railroad companies did all the work of loading and unloading stock.

Q. Why don't they do it now?

A. It is better economy for them to let us do it; we can do it cheaper than each individual road could do it for itself.

Q. And you can do it better and more expeditiously?

A. Yes, sir.

Q. So that it is a matter of economy for the railroad companies and also conduces to the better management of the stock yards that the business should be done as it is now done?

A. Yes, sir.

Q. When you take stock to the tracks you don't load it into any trains of the stock yards company, do you?

A. No, sir; we load it into the trains of the railroad company which is to ship it.

Q. There are no cars that are owned by the stock yards company that are used for that purpose at all?

A. None that are at present used by the stock yards company; no, sir. The company has a number of cars, but they are not being used at present and have not been used for a number of years.

Q. I say there are no cattle that are shipped in any way in cars of the stock yards company?

A. No, sir.

Q. It has no motive power at all?

A. No, sir.

Q. In the way of moving cars?

A. No, sir.

Q. When cattle are shipped into Kansas the commissionman indicates that he would like to have them distributed in a certain way, and if it is practicable, why that is done?

A. Not always so, because he is not always there when the
854 stock arrives; if he is there and expresses a preference we try to accommodate him.

Q. If he is not there the stock yards company drives the stock where its judgment indicates?

A. Yes, sir.

Q. And in placing stock it is not done with *with* reference to the State line, but it is with reference to what their judgment may guide them as to the pens that may be most convenient to put them in?

A. Yes; generally so, although I have known of cases of stock—I don't know that I can cite specific cases now—where shippers have

expressed a preference for having their stock yarded on a certain side of the State line, but that is an exceptional case.

Q. On account of some prejudice, perhaps?

A. Yes, or on account of a mortgage or some technicality of some kind.

Q. Continuing this question of who takes the cattle from the pens: You say the stock yards company delivers all stock to the buyer or to the person who is designated by the buyer to take the stock—that *if*, the Dold Packing Company buys one head of stock or five hundred, as the case might be, and designates that the cattle are to be shipped over the Santa Fe?

A. Yes, sir.

Q. And the Santa Fe then notifies you people that they have so many cattle sold by so and so to so and so, and requests that they be loaded on their cars?

A. That is about the general way it is done; the buyer or owner usually gives an order to the stock yards company, to the local agent of the road, who deposits it with us, although the owner may deposit such order himself; but in the usual way of business the order usually comes through the agent of the road—that is, for stock that is shipped.

Q. Now, speaking of these cattle that are bought by local packers, who takes those cattle from the yards to their destination?

A. The employés of the different firms or companies.

Q. Do the employés of the commissionmen drive those cattle out of the yards to the packing-houses?

A. No, sir.

Q. Do the employés of the stock yards company drive those cattle out to the packing-houses?

A. No, sir.

Q. It is the employés of the packing company who take the cattle out?

A. Yes, sir.

855 Q. You say that these local packers are located in the city, here; what city do you mean?

A. Kansas City, Kansas, and Kansas City, Missouri.

Q. What packing-houses are located in Kansas City, Kansas, for instance?

A. All but the Dold Packing Company, which I am quite positive is located in Missouri, are located in Kansas City, Kansas.

Q. You are not sure of Dold?

A. I don't know just where the State line is there, but my impression is he is located on the Missouri side of the line; I am quite positive that all the others are in Kansas.

Q. The pens that are used by these local packers and are designated as the Dold pens, or Armour pens, etc., are they the same, ordinary size of the other pens?

A. Well, they vary in size; in each division we assign certain pens for the use of each packing-house.

Q. Where are these pens located?

A. With reference to the State line they are located partly in Missouri and partly in Kansas.

Q. Whose pens are located in Missouri?

A. I think that nearly all of the packing-houses have pens that are used by them in Missouri; I don't know that I can designate all the pens used; we use between forty and fifty pens for the five packing-houses.

Q. Are those pens used for any other purpose?

A. Yes, sir.

Q. What are they used for?

A. Used for sale pens. Ordinarily they are used by the packers.

Q. Is it an ordinary thing to use them for sale pens?

A. No; not ordinary. There are times of the year when the packers will not use more than half the number of pens I named.

Q. As I understand you, when cattle have been sent to a certain division, and penned there, and sold there, if the Armour Company buys them, they are taken out of that pen and sent to the Armour Company's pen, where they are held until the employés of the Armour Company come and take them away?

A. Not altogether; when the salesman or owner brings those cattle to the scales he designates sometimes where the cattle are to go, but not altogether; very frequently, every day, they might have cattle that are weighed to the different packing-houses, and the yard company is directed to find a pen for them—that is, we put them in any pen we may find vacant that is suitable and large
856 enough for the cattle. The pens which we set apart for the packers are for this purpose. They buy a few cattle in one place and a few in another, and a few from another man, and they use these pens for bunching these cattle together after they are weighed; of course, before they are weighed, each individual lot of stock has to be kept separate, but after they are weighed and the purchasers desires them put in one pen we put them there, and for the convenience of ourselves and for the convenience of the packing-house companies we bunch those cattle into these pens.

Q. So after it is so yarded it is considered as being delivered to the purchaser?

A. No, sir; it is still in the possession of the stock yards until it is delivered to the employés of the packing-house company and they take it out. Now, for instance, one pen is full and their employés come to us and want to take the stock away from the yard. We send a man to that pen, who unlocks the gate, counts the stock out, and delivers it to the packing-house company's employés, and they drive it out of the yards to their house. Of course, we have restrictions. For instance, we deliver them at the pen; when they get to the outside gate of the yard we have a deliveryman there who delivers to them; but to any one else we would make delivery at that point; we might make delivery at that point—I mean final delivery. We deliver stock at any of these pens to any commissionman, and in case they wish to take the stock out of the yards they drive it to the outside gate where we have a deliveryman. They present their order, and we deliver and turn the stock over

to them. If any one should come there without an order, of course, they would be stopped; that is the system in brief.

Q. But the agents of the packing-houses take the stock out of the yards and drive it to their places of business?

A. Yes, sir.

Q. The hay that is purchased by these different shippers and that is delivered all over the yards is delivered by the stock yards company?

A. Yes, sir; usually.

Q. By its agents?

—. ——.

Q. That is to say, an order is given for hay and the employés of the stock yards company bring the hay and deliver it to the cattle in the pen?

A. Yes, sir.

Q. I will ask you to explain a little more fully what is
857 meant by this letter B in the statement you have sworn to.

A. I do not know that I can. Of course, we have a great many dead animals that are received in the cars and a good many animals that die in the yards.

Q. What is done?

A. They are taken and removed from the yards by the dessic-ating company. I know of no other company that is in that line of business now.

Q. Do you charge the same for yarding calves as for yarding cattle?

A. No, sir.

Q. What do you charge for yarding calves?

A. Ten cents a head.

Q. All the quarantine cattle are received in Kansas?

A. Yes, sir.

Q. Are they sold in Kansas?

A. Yes, sir.

Q. A certain per cent. of native cattle are sold in Missouri?

A. Yes.

Q. How are cattle bought and sold in these pens—what is the process?

Q. They are placed in the pens; each lot separate. The buyer and the salesman, the agent of the owner, agree on the price. If they are to be weighed the yard company delivers them to this agent or his employé, and they are taken to the scales, weighed, and then yarded.

Q. When is the sale consummated?

A. Consummated in the pen where the price is agreed upon; so much per hundred pounds is the usual practice. Occasionally they are sold by the head—so much per head.

Q. Do I understand that the commissionman and the buyer get together and look at a certain lot of cattle?

A. Yes, sir.

Q. And agree on the price while they are standing there looking at them?

A. Yes; usually. There may be cases where after having seen the cattle they agree upon a price at some other point, but usually it is done at the pen.

Q. For instance, the Armour Packing Company may buy a lot of cattle in Missouri that have been received by the stock yards company in Kansas, and after being purchased are driven back into Kansas for slaughter or any other purpose?

A. After being weighed; yes, sir.

Q. The stock yards company as such has no interest in the sale?

A. No, sir.

Q. Nor when the sale takes place?

A. No, sir.

Q. Has the stock yards company *has* office or duty to per-
858 form in making the sale—that is, the actual sale and purchase?

A. Nothing more than to certify to the weight of the stock.

Q. That has nothing to do with the sale?

A. Not with the actual sale; no, sir.

Q. They in no way deal in cattle?

A. No, sir.

Q. Nor any of the stock that is received?

A. It does not buy or sell stock.

Q. Nor it does not ship stock?

A. No, sir.

Q. Nor move stock by cars, or anything of that character?

A. No, sir; it simply unloads the stock and controls it while it is in the yards.

Q. These different alleys and viaducts are built for the convenience of handling stock?

A. Yes, sir.

Q. From the interests of the business down there?

A. Yes, sir.

Q. The buildings, alleys, and viaducts have nothing to do with the State line, as such?

A. No, sir.

Q. You say that two-thirds of the sales of the native cattle take place in Missouri?

A. Yes, sir.

Q. That is a mere approximation?

A. That was made up from the actual record of one day's transactions. I took one day last week, when our receipts were perhaps a little above the average, and had a transcript made of the actual handling of the business on that day, and that showed that about two to one were sold in Missouri.

Q. Are those pens in Missouri paved with vitrified brick?

A. Not all of them; no, sir.

Q. Most of them?

A. More than half of them, I should think; all this part of the yards here are paved (referring to the map).

Q. You refer to the portion between Bell and Genesee?

A. Yes; then there are some pens on this side that have been paved with brick, and all of the alleys, probably, with the exception of two or three, perhaps.

Q. These pens in Missouri are newer?

A. The last purchase along Bell street is all paved with brick.

Q. That portion of the map marked B is used for cattle, hogs, and sheep?

A. Mainly for cattle; all of our sheep are handled in the building designated as E at present.

859 Q. Are the pens over here all paved with brick?

A. The scale pens here in B are all paved with brick, and some of the other pens; as a general thing, this part of the yard has not been paved. That is the part we are working on now.

Q. Do the pens appear to keep cleaner, Mr. Rust, by the use of this vitrified brick—that is, they show up better?

A. In very bad, stormy weather; in ordinary weather the plank pens are fully as desirable as the brick pens.

Q. But in wet and muddy weather the others are better?

A. In bad storms the floored pens might not be quite so desirable.

Q. What is the capacity for cattle in B; that would embrace the central division of the native yards?

A. The proximate capacity in car-loads would be about 365 cars.

Q. That is for B?

A. That is, the main yards west of the State line; there are 275 pens.

Q. What is the capacity of A, the part of the main yards lying east of the State line?

A. The number of pens is 542, and the approximate capacity is 627 cars.

By Judge MARTIN: That is computed in cattle?

A. Yes, sir; we could crowd more into them. There are certain pens which we designate as one-car pens, or two or three car pens—that is, that would accommodate those numbers of cattle of the same kind—but the ground is divided off into large and small pens for convenience in handling different sized lots.

Q. Now, you say there are two cattle yarded in Missouri to one in Kansas. How do you get at that?

A. May 11th our total receipts of cattle were 7,563 head; of calves, 659 head; making a total of cattle and calves of 8,222.

Q. How many cattle to the car?

A. 23, on an average.

Q. And of those 8,222 cattle and calves you say two-thirds were yarded in Missouri?

A. About two thirds. I can give you the figures: 3,413 were yarded in Missouri and 1,772 in Kansas, in the native division.

Q. This yarding was done at the instance of the commissionmen or the owners of the cattle, and was done for *the* their con-

860 venience in the marketing of their cattle, as I understand it?

A. Yes, sir; although the yard company might have yarded part of them there without any special instructions.

And in answer to redirect interrogatories propounded to him by D. R. Hite, Esq., counsel for the complainants, the witness testified as follows, to wit:

Q. We do not understand these figures that you have given; you said 3,413 were yarded in Missouri and 1,772 in Kansas. That means Kansas cattle?

A. Yes, sir.

Q. You did not mean all the cattle that you received on that day?

A. No: those were the receipts of Kansas cattle on that day, 5,186 out of 8,222 which we received.

Q. You say these yards have a certain capacity; you mean a certain *a certain* capacity at one time?

A. Yes, sir.

Q. Is it a fact that these pens are frequrntly used more than once a day by different shipment- of cattle?

A. Ordinarily not, although they may be, but ordinarily one lot of cattle occupies the same pen during the day, but frequently pens may be occupied by two or three separate lots of cattle.

Q. That is, cattle come in in the early morning and are sold?

A. Yes; and go out, and other cattle may come in.

Q. What percentage of the cattle are sold the day they arrive?

A. Practically they are all sold; there may be a small percentage, but it would be very small. I have no way of determining that; perhaps two or three per cent. would not be sold on the first day.

Q. And those as a general thing are disposed of on the day they are sold?

A. Yes, sir; as a usual thing.

Q. Shipped away or driven away?

A. Yes; although you understand that in case of a dull market quite a percentage of cattle may be held over one day until the next day or until they are disposed of, but in the usual course of business they are sold on the day they arrive.

By Mr. BOYLE:

Q. That is, there are men who are engaged in the business
861 of buying and holding cattle for a higher price, who are called speculators or scalpers?

A. We have a class of men whom we refer to as traders.

Q. They sometimes keep cattle there two or three days?

A. Yes, sir.

Q. And there is a certain section of the yards that is set apart for their purposes?

A. Yes, sir.

Q. Where are they?

A. Mainly on the Missouri side of the line, down in the northeast corner at present.

Q. Can these men buy feed from any person other than the stock yards company?

A. No, sir.

Q. They keep these cattle with the hope of selling them on a higher market?

A. Well, they trade in cattle. I don't know as I can express it any better than to say they are wholesale buyers; they buy a strong of cattle. We have certain ones among them who will frequently buy a three or four or eight or ten car-load lot and divide them up and part of them they ship off; part of them are sold for dressed beef and part of them may be feeders. They retail them to different buyers who require them. They are dealers; they buy at wholesale and sell at retail, according to the demand. Their business is mainly in stockers and feeders; you understand that there is only a small percentage of our stock as received that is all of one class.

Q. What percentage of the stock received is dealt with in that way, kept in the stock yards any considerable length of time; is it not a very small per cent.?

A. I should say perhaps ten per cent., for a guess. I have no way of determining the actual number handled by them.

Q. Your quarantine yards over here in Kansas, are they ample for the purposes for which they are used, Mr. Rust?

A. Yes, sir.

Q. Some of those pens over there do not seem to be used much at the present time, and some not at all.

A. They are pens that are only used during the busy season; for instance, our heaviest receipts of quarantine cattle are usually during July and August. During the other ten months those pens might not be used at all, but we have a good many times in the busy season when every one of those pens is used. There were days last year when every pen in the yard was used for stock.

862 Q. That is an exception?

A. It happens a good many times during the busy season. Of course, our receipts vary greatly; sometimes we have very heavy days and sometimes the receipts are very low, but on those heavy days we have to be prepared to take care of all the stock that comes to the yard and keep each lot separate.

Q. Do I understand you to say that those yards are sufficient to handle quarantined cattle?

A. They are at the present time; yes, sir.

Q. Is the ground over there in the north yards adequate to handle the trade that comes there?

A. Yes, sir; at the present time.

Q. Calling your attention to the main yards, what is the capacity there to handle your business—I mean, is the capacity there to handle your business?

A. Yes, sir; at the present time. I will state that there were days last fall when practically every pen in the main yards was in use.

Q. So there are days when you get more cattle than you do on other days?

A. Yes, sir.

Q. Large numbers more?

A. Yes, sir. The receipts vary from two or three hundred up to 17,000.

Q. What is the average number of cars that came in daily during the busy season?

A. Our largest day's receipts were 1,002 car-loads.

Q. What class of stock?

A. That was 1,002 cars of stock.

Q. What is the average receipts of cars per day, taking it day in and day out?

A. I never figured it. Now, on two days of the week we received nearly double what we do on any other two days of the week. On Saturday our receipts of cattle are very low; on Sunday, practically nothing.

By the MASTER: What number of those 1,002 car-loads was assigned to the quarantine division?

A. I could ascertain that from the records, but I haven't it with me.

Q. Has the stock yards company a regular appointment as the agent of any railroad company—that is, does it come and say, We appoint you as our agent to do certain things?

A. I don't know. That would not come thro' me.

Q. You stated in your direct examination that the stock yards company acted as the agent of the railroad companies.

A. Yes, sir.

863 Q. Explain just exactly what you mean. You don't know whether it is an agent of the railroad companies or not?

A. I don't know that we have any written or official appointment of the stock yards company as their agent. My understanding has been ever since I have been connected with the company that we acted as the agent of the railroad companies.

Q. Now, just tell what it does for the railroad companies—that is, all you know about it.

A. We receive their stock, unload it from the cars, collect their freight charges, and where stock is forwarded from the yards, if there are any back charges, we receive it, together with our own charges, and do all the work of transferring the stock from one road to another. We are practically the link, the connecting link between any two roads handling stock through the yards.

Q. Do you make separate and distinct charges for your services in the yards?

A. Yes, sir.

Q. And you have certain rules and regulations that absolutely govern the control of stock when it is in your yards?

A. Yes, sir; as to the location.

Q. And the method of handling and things of that character?

A. Yes, sir.

Q. When you say that the stock yards company acts as the agent of the railroad company, you simply conclude that it acts as its agent because it does certain things in connection with the receiving, handling, and delivering of stock. You don't know, as a matter

of fact, anything in reference to any of their business arrangements?

A. I know this: that when a railroad company delivers a car-load of stock, sets it to our chutes, we open the door of that car and we take possession of the stock, and we relieve the railroad company of the responsibility for that stock from that time. We collect all the freight charges that are due to that company.

Q. You become responsible for the stock from that time on?

A. Yes, sir; and for all charges due to that company up to that point.

Q. And you get fifty cents a car for loading and fifty cents a car for unloading?

A. And perfirming this other service.

Q. You are responsible for accidents and things of that kind that occur in the yards?

A. Yes, sir.

Q. Taking them from the cars or taking them to the cars?

864 A. Yes, sir; in every way.

Q. The stock yards company is responsible?

A. Yes, sir; from the time it opens the car door until we close it, and the stock goes out of the yards, we are responsible for the stock—during the entire time.

Questions by the MASTER:

Q. Are you speaking of stock that is billed to Kansas City or of stock that is billed through and is -topped here for feed and rest, or both?

A. All stock. As soon as a railroad company delivers stock, whether it is billed through to other points or whether it is billed to Kansas City locally, we assume the entire responsibility for that stock from the time we take possession of it.

Q. The understanding that I got from testimony given the other day was that the company received fifty cents a car for unloading stock and loading stock that stopped here for rest and feed, which was paid by the railroad company; that is the impression which I got from the testimony. I don't remember whether you were the witness who gave the evidence.

A. Yes, sir; they pay us fifty cents a car for each car-load that we unload for them.

Q. What I want to know is, whose duty is it to load the stock under the regulations of the stock yards company; is it the duty of the railroad company, of the stock yards company, or of the owner?

A. We perform that service for the railroad company.

Q. It is, then, the duty of the railroad company?

A. It is the duty of the railroad company, as I understand it, yes, sir; if there were no stock yards here—in the first place, the law requires them to unload stock at certain intervals, not to keep stock in the cars beyond a certain number of hours, and that requires them to unload the stock at convenient places within that time limit.

Q. And instead of having yards and furnishing employés to do it, you do the work and they pay you fifty cents a car?

A. Yes, sir; we can afford to do it; there is nothing to prevent them from establishing yards anywhere they please in the State; they may establish yards and perform the service themselves.

Q. What I want to know is about this question of agency,
865 when and where it begins and where it ends. I can understand how it is with reference to stock which, as you say, is required to be unloaded for rest and feed, but I want to know when the responsibility of the railroad company attaches to stock that is sold in the yards and loaded to be shipped away?

A. Not until it is placed in the car; we assume all responsibility from the time the stock comes out of the cars until it is placed back in the cars to be shipped, but in taking the stock from the cars and in putting it back again, in the performance of that actual service, we act as the agent of the railroad company.

Q. I understood you to say that where *is* stock is delivered into the yard and there sold to non-resident buyers, to be shipped to Chicago, for instance, that you act as the agent of the railroad company in driving the stock from the pens to the car and loading it there?

A. Yes, sir; now, of course, in each case the owner gives a written order to deliver that stock to a particular railroad company; the buyer of the stock gives the company an order to load that stock on a particular road.

Q. What I want to get clearly in my mind is the moment and the place when the responsibility of the railroad company to the owner of the stock commences, irrespective of the relations existing between the railroad company and the stock yards company.

A. The railroad company would assume responsibility for the stock from the time it was taken from the pen; we in turn are responsible to the railroad company for anything that might happen while we are performing that service. We guarantee to the railroad company—in other words, for the fifty cents per car we agree to assume all liability for injury to the stock while in our possession. For instance, if we should get an order to load a car of stock on the Santa Fe, and through carelessness on the part of our employés that stock should be injured in loading on the car, we would be responsible for it.

By Mr. HITE: You mean responsible to the railroad company?

A. Certainly.

By Mr. HITE: As I understand it, the delivery to the railroad company takes place at the pen?

A. Yes, sir; in the first place, we get an order from the owner to deliver that stock to the railroad company; that is delivered to the stock yards company.

866 By the MASTER: Where do you make the delivery to the railroad company?

A. Practically, we deliver the stock to the railroad company at the pen, in one sense; in other words, just as soon as we take pos-

session of the stock to move it the railroad company is behind us, and they are responsible behind us; we act as their agent.

By the MASTER: Suppose that a shipper out here at Hutchinson should ship in a car of stock over the Santa Fe road to the Kansas City stock yards; as soon as the stock is unloaded in the yards the responsibility of the railroad company to the owner ceases, does it not? It has nothing further to do with it; it has discharged its duty by shipping the stock to Kansas City. Suppose that when the stock comes in here some of it is found to be injured?

A. We would not settle for that; he would have to look to the railroad company.

Q. When does the liability of the railroad company attach to a shipment of stock from here to Chicago?

A. I would say it would be right at the pen where the stock was taken. For instance, the owner orders 23 cattle out of block 27, pen 16; this order he gives to the company—the stock yards company—to deliver to the railroad company; when the cattle are taken out of the pen, the responsibility of the owner ceases until he gets possession of the stock at some other place. The railroad company would be the responsible party in that transaction, but we, of course, assume all responsibility in the performance of that service for which the railroad company pays us fifty cents a car.

By Mr. DANA: On the subject of the order of which you spoke, I may be wrong, but I have heretofore understood from your testimony that that order came through the representative of the railroad company to the stock yards company from the purchaser.

A. Usually so, but not necessarily. The purchaser may deposit that order with us in person, but usually it comes through the railroad company.

By Mr. DANA: The railroad agent secures the consignment and gets an order from the owner on the stock yards company to deliver the stock to the railroad company?

A. Yes, sir.

By Mr. HITE: Where does your agency for the railroad company begin; at what point in your yards does your agency begin
867 for the railroad company after the sale to the shipper?

A. I say, in my opinion, it begins when we take possession of the stock.

By Mr. BOYLE: Suppose there wasn't any fifty cents in it, wouldn't you be responsible for any damage to stock while it was in your possession?

A. Certainly, we are responsible for stock while it is in the yard. I say the stock yards company is responsible for the stock from the time they first move it until they close the car door upon it, but they are responsible to the railroad company and not to the owner. The owner's recourse is against the railroad company.

By the MASTER: You do not make any distinction between stock that is driven in and that which comes in on through billing?

A. We are responsible to somebody all the time for every hoof of stock that comes into the yards.

By Mr. BOYLE:

Q. You spoke of the quarantined cattle. Do I understand you to mean that all of those cattle are shipped directly from south of the quarantine line to your yards here in Kansas City?

A. They may be sent through.

Q. Are they shipped directly from that quarantined country or do they come from a line north of the quarantine line and are then reshipped, but are cattle originally from south of the quarantine line?

A. Under the Government regulations they can be stopped, unloaded, fed, and watered, and everything of that kind at designated points, but when they come here they are placed in the quarantine division in accordance with the regulations of the department.

Q. Suppose some Texas cattle are driven across the line in the winter months and are herded during the open season——

A. Yes.

Q. And are shipped to these yards, where would they go?

A. They would go into the native division.

Q. So that all of the quarantined cattle that you have referred to are cattle that are shipped directly from the quarantined district?

A. Yes, sir.

By Mr. HITE: You testified from data at hand that of the whole number of cattle yarded in 1896 929,241 were yarded in Missouri?

A. The approximate number; yes, sir.

868 Q. And of that 929,241 there is a large proportion that is bought for shipment, is there not?

A. Yes, sir.

Q. Now, suppose that 100 head of these cattle yarded in Missouri and sold in that State are purchased by the Dold Packing Company for shipment to New York, and the agent of the Dold Packing Company goes to the gate of the yard, nothing having been said to the stock yards company about shipment, and the stock yards company delivers that 100 head of cattle to the employé or agent of the Dold Packing Company and he takes them out of the yard, is there any responsibility for the care of those cattle that attaches to the stock yards company after that delivery to the agent of the Dold Packing Company?

A. Our responsibility for their general care would cease when we made that delivery to the owner.

Q. Now, suppose that the Dold Packing Company, its agent or any other person, informed you that these cattle were to be shipped by the Santa Fe, and you were instructed to have those cattle taken from the pens in Missouri to the Santa Fe Railroad Company, when would your responsibility to the railroad company begin?

Mr. Boyle objects to the question as calling for a conclusion of law.

By Mr. HITE: We expect to prove that the contract between the stock yards company and the railroad companies is not in writing, and therefore that the ideas and conduct of those who are required

to act under and carry out that contract are very material and important.

(No answer.)

Q. Suppose that 100 head of cattle out of the number sold and yarded in Missouri, to which you have testified, are sold to the Armour Packing Company; I understood you to say that the employés of the Armour Packing Company would drive those cattle through the yards?

A. Yes, sir.

Q. When is the delivery by the stock yards company to the Armour Company completed?

A. As a matter of fact, we assume all responsibility for the movement of the stock when our employés are in charge. In other words, when we take a car-load of cattle from the pen to load them on the cars it has been the practice of the company to assume all liability in the transaction until it is completed.

By the MASTER: The question is, When is it completed?

A. In my judgment, when the car door is closed and fastened.

869 By Mr. HITE: That is not the question I am asking you. The question I am asking is when you make delivery to Armour.

A. When their employés take possession of the cattle.

Q. When do they take possession of the cattle; at the door of the pen?

A. Yes, sir.

By the MASTER: Which pen do you mean; the pen where they are yarded when sold or the pen in which they are bunched?

A. Let me explain in this way: When the stock is weighed it is taken by our employés to certain pens. In doing that we are entirely responsible for that stock. Now, when the purchaser—Armour, Dold, or any other person—demands those cattle they go to the pen and drive them out. We consider that a delivery, and that they are responsible from that minute—from the minute we open the gate and turn the cattle out to them.

By the MASTER: They have the right to drive them out from that time on?

A. Yes, sir.

Q. You have no right to prevent them from taking the stock out?

A. Nothing, only in so far as that they must comply with our regulations.

By the MASTER: Suppose that Mr. Jones should buy a car-load of cattle in one of these pens, would he have the right to *to* go to the pen and unfasten the gate, after they had been turned into the pen or after they had been turned out into the alley, and drive them from that point to a point entirely on the outside of the yard?

A. Yes, sir.

By the MASTER: No one would interrupt him on his way?

A. In order to get possession of the cattle he would have to present an order for them after he purchased them.

By Mr. HITE: When that order was given to him what would he do with it?

A. Deliver it to the employés of the stock yards company delivering the cattle to him.

Q. And your employé would take the order, showing that the cattle had been sold to Mr. Jones?

A. Yes, sir.

Q. Now, when the cattle were properly counted out and the gate was opened, Mr. Jones would then have the right to drive the cattle through the alleys and out of the yard?

A. Yes, sir; he would have that right.

Q. Now, what is the practice of the company with reference to considering the delivery completed when the stock is turned over to the buyer and he takes possession of it?

870

A. The delivery is completed then.

Q. And after that it is the practice of the stock yards company to assume no responsibility for the cattle, except such as may grow out of defective flooring, or things of that kind?

A. That is the fact.

By Mr. HITE: In case Mr. Jones should want to ship those cattle, and an order were presented to the stock yards company for that purpose, and they drove the cattle to the railroad terminal, would the company, then, from the time it got the order until the stock was delivered into the railroad cars be responsible for the care of that stock?

A. Yes, sir.

Q. To whom would its responsibility run, to the railroad company or to Jones?

A. I don't understand quite what you mean. You mean if the owner took the stock?

Q. No; you must get that out of your mind. Jones is a shipper, and he instructs you to deliver that stock for shipment; from the time you take that stock out of the yards where Jones put it and *and* put it in the cars and close the door upon it, who is responsible for the care of that stock?

A. I should say the railroad company.

Q. And who is responsible to the railroad company?

A. The stock yards company.

Q. To whom is the railroad company responsible?

A. To the owner. We have a great many cases of that kind; it is something we have had to do with.

Q. Referring to the case of Jones. He has got some stock in a pen which he desires to ship. Now, suppose you had no contract with the railroad company such as you have described, would the employés of the railroad company have the right to go to that pen and under proper regulations take that stock out and load it into a car on an order from Jones, if you had no contract with the railroad company?

A. I don't know how to answer that question. Of course, we have an agreement with all the railroad companies to do this work for them. Whether we would allow the railroad companies to use

our facilities without some agreement, I don't know. That would be for the management to say.

Q. That is not a matter that comes within your charge?

871 A. That would be a matter entirely for the management of the stock yards company.

Q. You were asked about the contract of sale at the pens. That contract of sale depends upon the weights to be thereafter furnished, does it not?

A. Not the contract of sale; the weight simply determines the amount.

Q. But the amount to be paid depends upon the weight?

A. Yes, sir; the usual custom is to sell live stock by the hundredweight, and our weight determines the amount of the price to be paid upon the purchase and sale.

Q. Is it the practice of the buyers and sellers at the stock yards to take the weights of the stock yards company?

A. Yes, sir.

Q. Now, what do you do, after stock is weighed, in the way of giving any evidence of the weight to the buyer or seller?

A. We make a record of the transaction and of the weight, and we deliver to the seller a ticket or memorandum showing the number of head and the weight—the class of stock.

Q. Is the transaction between the buyer and seller completed on the basis of that ticket—that is, is the money paid over on the strength of it?

A. The money is paid on the ticket.

Q. The money is paid from the buyer to the seller on the ticket?

A. Yes, sir.

Q. Are there any cases where that is not so?

A. Stock is sometimes sold by the head.

Q. Is that a frequent occurrence?

A. Yes, sir; that is a common occurrence.

Q. What proportion of stock is sold by the head?

A. I would not be able to say. It would be a small percentage; probably five per cent. I don't think it would be that much.

Q. The stock yards company has no connection whatever with the commission firms, has it?

A. No, sir; none whatever.

Q. Whom do the commission firms represent?

A. They represent the owners of the stock brought here.

Q. And when you got instructions from them to put

872–904 stock in certain pens, and you do it, you understand you are doing it on the request of the owners through their agents?

A. Yes, sir; we regard them as the agents of the owners.

By Mr. BOYLE:

Q. The weighing of this stock is one of the things which the stock yards company does for the yardage charge?

A. Yes, sir; that is one of the services performed.

905 GEORGE T. WILLIAMS, a witness produced by the complainants, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to direct interrogatories propounded to him by D. R. Hite, counsel for the complainants, testified as follows, to wit:

Q. How old are you?
A. Past 60.
Q. Where do you reside?
A. In Chicago.
Q. How long have you resided in Chicago?
A. About 41 or 42 years.
Q. What is your present business or occupation?
A. I am handling real estate and farming.
Q. What, if any, experience have you had in and about the management of stock-yards business?
A. Well, for two years I was connected with the West Madison Street yards in Chicago in 1855 and 1856, part of 1856, and part of 1856 and 1857 I was acting as cashier and book-keeper at the Lake Shore yards in the same city. Then I constructed for the Baltimore & Ohio Railroad Company a set of stock yards at Richmond, Indiana, and had charge of them for about a year. I next became connected with the Union Stock Yards and Transit Company, about one year after their construction, as secretary. Afterwards, in two or three years, I was elected secretary, and remained with the company 28 years; at the same time I assisted the superintendent in much of his duties, and also, in the absence of the president, took care of his business.
Q. Has your experience in and about the stock-yards business been such as to bring you into contact with the actual transaction of it?
A. Yes, sir.
Q. Are you acquainted with the plant of the Kansas City Stock Yards Company at this place?
A. I am.
Q. Are you acquainted with the geographical location generally of the stock yards throughout the West?
A. Yes, sir.
Q. Have you, during the course of your business, kept in touch with the business generally throughout the West, Mr. Williams?
A. I did during the time of my connection with the Union Stock Yards Company and for quite a while since.
906 Q. Have you kept in touch with the business of the Kansas City stock yards?
A. I have.
Q. Are you acquainted with their business, in the extent of its operations and its general business connections throughout the stock-raising country?
A. I am, in a general way.
Q. During the time you were connected with the Chicago stock

yards, or during a part of the time, was the Kansas City Stock Yards Company one of your competitors for business?

A. Well, we didn't consider the Kansas City yards a competitor for a long time. We considered that Kansas City, Omaha, and St. Louis were in such a position that they would naturally receive stock coming from the far West, the Southwest and Northwest, and we made it a point, of course, to procure all the business to come through. The Union Stock Yards market was such as to aid and assist in bringing its portion of the stock through, but in the past three or four or five years they are looked upon as competitors and working to draw as much as possible from the Union Stock Yards market.

Q. Have you observed the growth of the business of the Kansas City Stock Yards Company in the past few years?

A. I have.

Q. Have you given any considerable attention to it, Mr. Williams?

A. To quite an extent; I was in close touch with all the yards and kept track of their constructions—that is, their spreading out and the enlargement of their business.

Q. Have you been familiar with the extent of their transactions year after year?

A. So far as concerns receipts and shipments, I have each year, and the general results of the revenue.

Q. From your knowledge of the stock-yards business, please state what elements, in your opinion, enter into the establishment of a successful stock yards and stock market.

A. There is a great many things that go to make up a stock-yards plant; it is a peculiar institution; it differs very largely from other business; it requires a good location and should be adjoining a city, quite a large city, contiguous to the live-stock districts, where live stock is raised; that is a great point; also the conditions of construction of the yards, everything pertaining to the business to rapidly take care of all the stock that is offered. It *it* is
907 necessary to have a large number of buyers, packing-houses, and such things, in order to enable the company to bring about ready dispatch of business and make a market.

Q. Is a quick and active market an essential element in the establishment of a successful stock-yards business?

A. Very essential.

Q. What about railroad facilities; are they necessary?

A. It is very necessary to have good railroad facilities—plenty of track room, railway yards, roads reaching out into the various States and Territories where stock is raised in order to procure it.

Q. From your knowledge of the Kansas City Stock Yards plant, please state whether, in your judgment, its locations, connections, and arrangements with reference to market facilities which you have described and these packing-houses, buyers for exp-rt, and others is a good one.

A. I have arrived at that point now wherein I consider it one of

the best in the United States. I would like to amend that by adding taking into consideration the prospects of the future.

Q. From your knowledge of the stock-yards business, please state whether there is a value as a going concern in a stock-yards business, such as that of the Kansas City Stock Yards Company, over and above the value of what might be called the tangible property which it owns.

A. Yes; of the intangible property, beyond the plant and construction, would be all owing to the business they would be able to build up, which would increase the value of the plant.

Q. Have you ever been personally acquainted with and taken part in any transaction in the sale of a large stock-yards plant, where this question of the value of intangible property or business cut any figure?

Objection: as incompetent, irrelevant, and immaterial. Overruled.

A. During my connection with the Union Stock Yards and Transit Company another party or corporation organized in New Jersey purchased the *the* stock of the Union Stock Yards & Transit Company, which, of course, carried with it the full possession and ownership of the property. During the time that the trade was going on with parties from New York, Boston, and one or two on the other side of the water I was requested to give to them all the information which I had within reach in the books pertain-
908 ing to the commencement of the business, to its growth, and the dividends paid by the company, because as they represented they could understand what the business was worth or the possibility of the future in the business over and above and beyond the plant itself and the value of the land and right of way and construction. I furnished those reports to the parties that solicited them or were to receive them, and the property was sold by the purchase of the capital stock.

Q. Are you able to state from your knowledge of the two plants—of the Chicago Stock Yards Company and the Kansas City Stock Yards Company—whether there has been any similarity in the growth of their business and the extent of the establishment?

A. There has been about the same gradual gain, similarity in the business, along during the last 23 or 24 years. It has been very great.

Q. Are the two properties enough alike to be compared for the purpose of ascertaining any relative valuation that should properly be attached to the business of either or both of them?

Question objected to as far-fetched.

By the MASTER: I think he had better state the conditions which existed in Chicago 23 or 24 years ago, and let the court ascertain whether they are the same.

Q. Will you please state briefly what was the growth of the stock yards at Chicago during the 23 or 24 years you have mentioned?

A. It is over 30 years ago since the Union stock yards were con-

structed—in 1865. When they commenced operations they went out into the suburbs of Chicago—five, six, or seven miles out from the main part of the city, where it was broad acres and no improvements, not even streets; purchased a section of land and commenced the construction of the stock yards. They constructed the yards, and as soon as they were ready for business they immediately proceeded to interest the packers that were located down along the river near the heart of the city and gave them encouragement to come out to the stock yards and build packing-houses there. They did so, and the stock yards company built roads and tracks and made connections with the different railroads, and a market
909 was started. Of course, from its infancy they kept building packing-houses and tracks and improvements of the yards and more construction and buildings from time to time, and, in fact, they have been at it ever since and are still constructing; then they commenced to reach out into the country in all directions to open up and inform the people about their market and the prospects for sales. It went along as other yards have done in the manner that Mr. Child has described, sending out solicitors and advertising in various ways—a great many ways; worked right straight along to build up and make the Union stock yards what they are today. Of course, it stands today as the greatest market in the world, although I believe Kansas City claims to be about the same.

Q. Now, about this transaction to which you referred?

A. You were speaking about the growth. I will refer to a report which will give the growth of the business on live stock. Of course, I remember the main points, but I can give it fully from this report. We started in 1865. In 1866 they received 393,000 cattle. They have continued to increase year after year in all the various ways that they have brought about to build up a market, until in 1889 they reached three million and over of cattle. In 1892 it was over 3,500,000; in 1896, 2,600,000. Some three or four years back there was more live stock in the country, and they received probably a greater proportion than any other market.

By the MASTER: What did they receive in 1889?

A. 3,023,000.

Q. And in 1890?

A. 3,400,000, and hogs went up to seven or eight million.

Q. Please state to the special master in the transaction you have referred to where the stock yards in Chicago were sold, how much was paid for the value of the business over and above the value of the tangible property.

A. I cannot exactly divide it in that manner. I can state what they paid for the tangible property and the intangible property together—the whole plant—what they considered it worth by their purchase of the stock, and it showed a large amount over and above the tangible property.

Q. How much was the amount over and above the value of the tangible property?

A. Well, the tangible property at that time stood stocked at

$13,200,000, and was considered to be worth that amount,
910 and they bought the stock and paid $150 a share for it.

Q. How much did the whole plant cost them?

A. It would be above the value of the tangible property over six million dollars.

Q. Then they paid for the property altogether about $20,000,000, did they?

A. Yes, sir.

Q. How much did they pay for all the property they purchased?

A. They paid $150 a share, which was based on $13,500,000. That would make it over $19,000,000, wouldn't it?

Q. You say you came into actual contact with that transaction?

A. I was present and made delivery of the stock. I received the stock certificates and delivered them to the corporation purchasing the same in New York.

Q. From your experience as a stock yardsman, please state what relation the market value of stock bears to the selling price of the plant, considered as an entirety and as a going concern.

A. I think it is the main thing—that is, to be compared with the plant, what will the stock sell for? It is the only way, as I understand, that you can get at the value—what any person or corporation will pay for it.

Q. Now, from your knowledge of the Kansas City stock yards, what, in your judgment, is the value of that property considered as a unit, an entirety, as a completes system of stock yards, and as a going concern, assuming the tangible property to be worth from five to seven millions of dollars?

Objected to for the reason that the competency of the witness to answer has not been shown.

Preliminary cross-examination by Mr. BOYLE:

Q. Do you know how much the property of the Kansas City Stock Yards Company cost the company?

A. I don't think I know just the amount it has cost them. I know of their construction from time to time and enlargement and increase of stock until it is about seven million and a half, I believe.

Q. Do you know what the property is worth down there?

A. I should judge——

911 Q. Do you know?

A. I don't know by any transaction as to the value of the real estate.

Q. That is what I want to get at.

A. I don't know just that.

Q. Do you know what the value of their superstructures and other improvements is?

A. I don't know what they cost.

Q. You don't know whether the seven and a half million of stock represents the value of the plant or not, as a matter of fact; you don't know that?

A. No; I don't know the value of the property.

Q. You don't know how much watered stock there is in this plant?

A. I don't know anything about that part of it. I understand it was sold to buy additional property and additional improvements.

Q. But you don't know the value of the additional improvements which have been put on; you only know what business they do from their published statement, do you not, Mr. Williams?

A. That is the only way I get at it, is from the statement of receipts, shipments, and revenues.

Q. Do you know anything about the cost of running the plant down there?

A. No, sir.

Q. Do you know what they have to pay for labor down there?

A. No, sir.

Q. Do you know anything about the horse and mule market down there?

A. I know they have got a horse and mule market down there.

Q. Do you know how that part of their plant compares as to earning power in comparison with the general market?

A. In comparison with the other live stock?

Q. Yes.

A. Only from hearsay and talk.

Q. You have no actual knowledge about it?

A. No, sir; not from figures.

Q. Have you ever bought any stock of the Kansas City Stock Yards Company?

A. I bought a little.

Q. Do you own it now?

A. I do.

Q. How much stock do you own?

A. I have 100 shares.

Q. How long have you owned it?

A. I think I purchased it along 7, 8, or 10 years ago, some of it.

Q. When did you purchase the rest of it?

A. It must be some four or five years ago.

Q. 7 or 8 years ago you purchased some?

A. I think I purchased it about 7 or 8 years ago; maybe 20 shares of it longer ago than that.

912 Q. When was the first purchase you made, Mr. Williams?

A. I can't give it to you exactly, but I think it was at least fifteen years ago.

Q. How many shares did you purchase then?

A. Ten shares.

Q. How many shares have you purchased since?

A. Up to 100.

Q. How much money did you pay for those ten shares?

A. I don't remember the price I paid; it was something over par. I don't remember the price; it has been fifteen or sixteen years ago. The stock, of course, is very much higher, and has been and I paid more for the other when I purchased it later.

Q. You got some stock dividends, didn't you?

Objection as improper sustained.

Q. You don't know what you paid for that stock?

A. I don't remember; over par at first, and very much higher afterwards. I don't remember.

Q. How lately have you bought any other stock?

A. It is some seven or eight years since I bought any stock.

Q. How many shares did you buy then?

A. I don't remember what number I bought. I know what I purchased altogether amounts to 100 shares. I think it was somewhere in the neighborhood of $115, $120, or $125 per share at that time.

Q. How many shares did you buy at that time?

A. I can't tell you.

Q. You must have bought 90 shares.

A. During the whole time I have received 100 shares.

Q. How many shares did you buy when you paid money?

A. I couldn't state the number.

Q. How many times have you been down here, Mr. Williams, to the Kansas City stock yards?

A. I have been out here every two or three years for 25 years.

Q. What was your business in coming?

A. Most of the time was to come and see parties here that I was transacting business with, and generally visited the yards to see what they were doing.

Q. Would you go over the books then?

A. I didn't go over the books except upon one occasion.

Q. What was that?

A. That was some 23 years ago. I was sent here by the president of the company to examine into their books and ac-
913 counts and to get up a system for their accounts and tickets for use in the yards in the transaction of the business, scale tickets, and various other matters.

Q. Did you examine how much money they had put into the plant at that time?

A. No, sir.

Q. Then you have no knowledge as to the value of this stock as compared with the value of this plant, Mr. Williams; you don't know what this plant is worth as compared with the value of this stock on the market, do you?

A. I think it is worth all——

Q. Do you know?

A. I don't know exactly the value, only from the way values are brought about by transactions in the stock.

Q. Generally?

A. Yes; all that stock.

Q. Any stock?

A. I would only apply that to sales of the stock of the stock yards company while discussing this question.

Q. I know; but the sales of stock on the market are usually sim-

ilar, whether it is railroad stock, stock-yards stock, water plants, gas plants, or what not, is it not?

A. Yes; any stock that is on the market.

Q. That is on the market?

A. I don't know whether it — on the market or not.

Q. Don't you know there is some stock that has not been taken up yet?

A. That would not be on the market.

Q. Why wouldn't it be on the market?

A. It is not taken out of the treasury; it wouldn't be on the market.

Q. Would not the subscription books be open?

A. I don't know what the arrangements are for the stock in the treasurer's hands; it stands at the same value, but it is not on the market.

By Mr. BOYLE: I withdraw my objection to Mr. Williams testifying.

By Mr. HITE:

Q. Now, from your knowledge of the Kansas City stock yards, what, in your judgment, is the value of that property, considered as a unit, an entirety, as a complete system of stock yards, and as a going concern, assuming the tangible property to be worth from five to seven million dollars?

A. The sale of the stock would give that result or answer.

914 I *I* consider the plant and the tangible property worth a great deal more money than what it cost.

Q. Can't you put that into money, Mr. Williams, as to how much you think that property is worth down there, assuming that the tangible property is worth from five to seven million dollars? What is the completed plant worth as a going concern, tangible and intangible?

A. Of course I would take into consideration the price of the stock or what it could be bought for, and yet—I don't know—I don't suppose any one knows what the stock can be bought for in order to obtain the plant. I should judge, some three or four million dollars over its capitalization now; that is my opinion.

Q. That it is worth that much?

A. That the stock sales would bear out quite a portion of that; take their last value that I knew of; sales.

Q. Are you able to state, from your experience in the purchase and sale of stock yards, whether the market value of the stock has been the guide with reference to the value of *the* all the property, tangible and intangible? Is that the measure of value of the completed plant as a going concern?

A. I think the stockholders had in view the intangible value of the property here.

Q. That does not answer my question exactly, Mr. Williams.

A. In the case of the sale of the stock of the Union Stock Yards & Transit Company, they paid beyond the value of the stock.

Q. Do you mean by that that they paid more than the market value of the stock?

A. Yes; at the time of the purchase the stock was selling for about $120 to $125 on the market, but when they came to sell this stock they considered the future prospects and the intangible value of the business, and it sold for $25.00 a share more, bringing $150 a share.

Q. That was the whole body of stock, was it?

A. Nearly all; they procured within 7 or 8 hundred shares of the entire capital stock.

Q. The price you speak of was paid for all that they procured?

A. Yes, sir; they paid more for some afterwards.

915 And in answer to cross-interrogatories propounded to him by Mr. Boyle, attorney general, the witness testified as follows, to wit:

Q. How much stock of the Kansas City Stock Yards Company is now for sale on the market?

A. I don't know whether there is any on the market or not.

Q. Is your- for sale?

A. It would be if the law recently passed by the Kansas legislature is held to be good. I should be willing to sell immediately.

Q. Why?

A. Simply because I believe the great future of the Kansas City stock yards will be very greatly damaged.

Q. Why?

A. On account of the earnings.

Q. Well, they would still have the same territory, wouldn't they, to draw from?

A. They would have the same territory, but their competitors would get the business; the stockholders wouldn't want to continue in that way long.

Q. The stock-shippers would ship to a rival market where they would have to pay 25 cents yardage on cattle, would they?

A. They would ship to other markets because this market would not probably hold up a great while.

Q. What makes the markets?

A. The buyers and all the appliances connected with the stock yards.

Q. Would the reduction of the charges affect the buyers of stock on the market?

A. It would not if they continued the market.

Q. Would it affect the packers who buy on the market?

A. Not if the market was continued and kept open in the future.

Q. The number of stock shipped to the market and the number of buyers on the market determine and make the market, do they not, with all these other elements you have spoken of?

A. The prices that are received and the amount of stock and the buyers, packing-houses, etc.

Q. The prices that the stock yards company charges for yardage

and feed, that only enters into the making of the market in so far as it may attract or repel trade, does it not?

A. Certainly; there would be no trouble about that pro-
916 vided the market continued to run by the corporation own-
ing it.

Q. Now, suppose that these charges, as fixed by the legislature, would still permit the company to make a good profit—I will put to you a hypothetical case. Suppose this law allowed the company to make a good profit on their investment down there, on the value of their plant as it is found by this evidence, would the market be continued then?

A. Yes; if it was a satisfactory profit to the stockholders.

Q. What do you consider a satisfactory profit to the stockholders?

A. In a stock-yards plant?

Q. Yes.

A. I think, taking into consideration the things which might injure its business or its earnings, a stock yards company ought to make over six per cent. on its capital stock.

Q. Suppose they made six per cent.; suppose they made seven per cent.; would that be a fair return?

A. Seven per cent. ought to be satisfactory to the stockholders.

Q. Do you know of any class of business now that is making seven per cent., Mr. Williams, under the present conditions in the business world that have existed for the last five or six years? What business is making that amount of money?

A. In many cases mortgage loans on land.

Q. What other business?

A. There are various kinds of business. I could not exactly express them.

Q. There have been a great many businesses that have gone down under the financial depression in the last few years?

A. Yes, sir.

Q. But the Union stock yards and the Kansas City stock yards have gone on earning greater dividends during that time, have they not?

A. Six per — is all they have been paying, I think.

Q. Upon their stock?

A. Yes, sir.

Q. Ought not that to satisfy stockholders investing in a plant of that kind?

A. There is too much uncertainty; they don't know whether they are going to make six per cent. or three per cent. in the future; therefore many of them would unload their stock and place the money in such a position as to earn six per cent., and not be connected with corporations with the chances of damage that may occur against them by legislation or otherwise.

917 Q. A moment ago you said that one of the things that gave this stock yards its value was the earning power of the stock and the fact of the prospects of the plant?

A. Yes, sir.

Q. That is by reason of its geographical location and the plants around it, and so on?

A. Yes, sir.

Q. Now, these charges would not affect the locality geographically, would they?

A. No, sir.

Q. Nor they would *would* not affect these great industries that are built up around them?

A. Not if the stock yards continued to do business as now.

Q. The amount of business that an institution does, as a rule, determines the amount of money which it makes, does it not?

A. As a rule.

Q. That is to say, a person who does a certain amount of business at a fixed price might earn just as much money if the prices were lowered and he did a greater volume of business; is not that true, as a general business proposition?

A. That might be true.

Q. I will ask you if this is not true, that if the charges of any one of these stock yards were such that the shippers were dissatisfied with the charges and held that they were too high, and therefore fed largely in the cars instead of in the stock yards, whereas if the charges were more moderate they would feed in the yards, doesn't that decrease in a measure the earnings of the yards, Mr. Williams?

A. If they do not feed as much that would decrease the earnings; there is such a thing as doing a large volume of business and not making any money.

Q. How much did the Chicago Stock Yards Company pay for the section of land which they bought near Chicago?

A. I don't remember the price they paid for it.

Q. Was land very valuable there at that time?

A. Some six or seven hundred dollars an acre, I think, as near as I can recollect.

Q. Do you know what the improvements of the Union Stock Yards Company have cost?

A. Well, I could not give that figure, because the Union Stock Yards Company has been rebuilding, I think, five or six different times; it would amount to that. In that climate, in that location, it requires rebuilding of the yards in from 5 to 9 years; the
918 planking will not last over five years there. You take their gates, racks, and feed-troughs; they will last probably an average of six years, and the fencing of the pens perhaps eight or nine years. The average, I would say, would be six or seven years.

Q. Have they an exchange building there?

A. Yes, sir.

Q. How many commissionmen have they?

A. I don't know just now; something like 200.

Q. Do they rebuild that every five or six years?

A. About the same thing, for they have made additions to it from year to year, which amounted to as much as the first construction of the exchange in the first instance.

Q. That is, they have extended it?

A. Yes, sir.

Q. As the business has increased they have extended the Exchange building?

A. Just precisely the same as they have here; perhaps to a greater extent.

Q. You say that property cost them eight hundred dollars an acre; that is your outside figure?

A. That is for the first purchase.

Q. How much land have they purchased since?

A. They have continued to purchase land from year to year for the last 20 years.

Q. You think their land purchases and the superstructures have cost in the neighborhood of fourteen million dollars, do you?

A. Thirteen millions.

Q. Cost them thirteen million dollars?

A. It has cost them that with the rights of way they have acquired; thirteen millions with their construction.

Q. The property is stocked at $13,200,000?

A. Yes, sir.

Q. And it has cost the Union Stock Yards Company thirteen million dollars to put that plant there?

A. With the exception of a portion of the right of way that was appraised property at the time they increased their capital stock.

Q. They put that much money, cold cash, into it?

A. With the exception of this right of way, which I say was appraised to be worth so much money at the time they increased their capital stock.

Q. How much did that amount to?

A. I don't know what that was.

919 Q. It was not very much?

A. Quite a piece of property. It is a right of way through the city.

Q. What did it amount to—a hundred thousand dollars?

A. Oh, it amounted to several million.

Q. So this capital stock of thirteen millions dollars represents increase of value of property, where they have not paid any actual cash?

A. It represents increase of construction, increased purchases of land, and the valuation placed upon the right of way that they had to have in order to connect with the different railways.

Q. What I am asking you is how much money did the Union Stock Yards Company put into this plant and which is represented in this thirteen millions of stock.

A. That I can't tell; I would have to refer to the books.

Q. Don't the stock represent the amount of money they have put into the plant?

A. The stock represents the plant at the time the stock was issued.

Q. Do corporations increase their capital stock without putting an equal amount of money into the institution?

A. They can only do it by construction or the valuation placed

upon land that they could dispose of at a larger amount of money than they paid for it.

Q. Then, on the increased valuation of the land, they increased the stock?

A. They could increase the stock in that way.

Q. And they did?

A. They did in connection with their construction account and improvements.

Q. Didn't you purchase this right of way?

A. The stock yards company purchased the right of way.

Q. Didn't they pay for it?

A. Yes, sir.

Q. They paid for it the same as the rest of the land, didn't they?

A. It was purchased and held for a long time; afterwards it became very valuable, and instead of selling it at the time at its then value they retained the property and finally constructed tracks upon it, and their stock was based upon the value of that right of way.

Q. Then the thirteen millions didn't represent what they
920 put into the plant?

A. Didn't represent that they put just that many dollars into the plant.

Q. But they are earning dividends on that much stock?

A. Certainly, because the value is there.

Q. That is the way you people reason that out?

A. Yes. If a person went to buy that property today he would have to pay that price, and more, too.

Q. More than thirteen millions?

A. Yes; more than thirteen millions. It would cost more than that to buy the property they are occupying—that is, in a good time. I don't know that it would be just at the present time, while everything is depressed.

Q. They are earning what dividends?

A. Six per cent.

Q. These are what you call close and depressing times, and yet they are earning six per cent. In good times, when things are flush, what do they earn?

A. The hard times do not come materially in contact with the live-stock business, while it does with real estate.

Q. The stock-yards business is not affected by the hard times?

A. Their real estate, yes; but the live-stock stock business has not been.

Q. That is the thing they make their money out of?

A. Yes, sir.

Q. And this going concern is not affected by the hard times that affects every other industry in the country?

A. Oh, a trifle; their receipts fell off a little last year.

Q. That is because the receipts of the Kansas City Stock Yards Company increased last year?

A. Oh, I don't attribute it to that exactly.

Q. Are you interested in the Union Stock Yards Company, at Chicago?

A. I am, I believe, to the extent of five shares.

Q. Is that a better market than this?

A. It has been claimed by the market and by the people interested there to be the best market in the world.

Q. What do you think about it now?

A. I think it is as good market today as there is in the country.

Q. What do you think about it as compared with Kansas City?

A. I think Kansas City is close onto it.

Q. Do you think the Chicago market is better than that of Kansas City?

921 A. Take it all around for large shipments of stock, they can handle more stock and have larger railroad facilities and larger facilities for slaughtering stock.

Q. It is a better market?

A. It is for large shipments.

Q. The Kansas City Stock Yards Company charges just as much as they do in Chicago?

A. For what?

Q. For yardage and feed?

A. I think so.

Q. And yet your market up there is a better market?

A. It must be, because we get more stock.

Q. You bought ten shares of the stock of the Kansas City Stock Yards Company fifteen years ago?

A. Yes, sir.

Q. What was the capital stock of the company at that time?

A. I don't remember; it was small.

Q. When they reorganized in 1884 they gave two shares for one, if you will remember.

A. I don't remember.

Q. You remember that you got some stock that you didn't pay cash for?

A. I got some stock when it was increased, but I don't remember the amount.

Q. You got some stock that you didn't have to pay money for, didn't you?

A. I paid for it in what the company earned here, and the way they increased their plant.

Q. I know, but you got the stock, and you didn't have to pull the cold dollars out of your pocket for it, did you?

A. When they increased the stock, I don't remember whether there was a certain amount of money taken in from the stockholders or not; I think there was one increase when we took additional stock in consequence of the purchase of some lands, and I think the stockholders paid in a certain amount of money; I don't remember.

Q. Don't remember when you paid out any money?

A. I don't remember; it was some time ago.

Q. Have you made any subscription for money consideration or

has any assessment or levy been made upon you by the directors to defray the expenses of purchasing lands in the last four or five years?

A. I think not.

Q. Now, you say you come down here every two or three years?

922 A. I visit Kansas City every two or three years.

Q. You keep in close touch with Colonel Morse, and know him very well?

A. I am very well acquainted with Colonel Morse.

Q. Talk with him about the stock-yards business?

A. Sometimes.

Q. You are interested in what is known as the State Line Improvement Company, are you not?

Objected to as incompetent. Sustained.

Q. What is watered stock, Mr. Williams?

A. I never had any experience with watered stock.

Q. You own some of this Kansas City Stock Yards Company's stock?

A. I don't regard that as water, simply because I regard the plant as being worth more than the capital stock.

Q. Will you explain what you understand by water?

A. I should think if you should put in one dollar and issue two in stock, it would be water.

Q. If a man should buy property that was quited today at 94, and should issue two or three for one, that would be watered stock, would it?

A. On that valuation, at that time, yes, sir.

Q. Do you place a value on what has been designated as the good will of this property, Mr. Williams?

A. You mean, in my evidence?

Q. Yes.

A. I think the good will or the business that has been worked up is far beyond the capital stock or the value of the tangible property.

Q. What is that worth?

A. It is a hard matter to specify just what it is worth; you can only judge by what the capital stock would cost.

Q. Is that the only way you have of judging?

A. If I was going to buy I would take into consideration the location of the plant and all its surroundings and the prospects for future business.

Q. The prospects of future business enter largely in this question of the good will, do they not?

A. They enter somewhat into it. The business already built up would be the proper element to consider in connection with the tangible property.

Q. What is that worth?

A. I should say it would be worth somewhere from two and a half to three million dollars.

Q. How do you arrive at that figure?

A. The stock, in the first place, cannot be bought for much
923 less than that, because they think it is to be a valuable property hereafter; it has made a rapid growth.

Q. What other element is there?

A. I don't know of any particular element except the value of the stock and the increased growth of the business.

Q. Then does the value of the stock determine the good will or the success of the business?

A. It determines what you can get the property for.

Q. Does that represent the value of the property and of the good will—that is, the value of the real estate and this other element of value?

A. If the capital stock was all purchased in the manner that the stock of the Union Stock Yards & Transit Company was purchased that would determine the value of the stock and the plant.

By the MASTER: Do you know what the present value of the stock of the company is now?

A. I don't know what the value of it is today; the last I knew of it was about $130 to $135 per share.

Q. When was that?

A. Previous to the legislation.

Q. Was it while the legislature was in session?

A. I think shortly after it was in session.

Q. While they had this bill under consideration?

A. That would naturally affect the market somewhat.

Q. How much?

A. It would affect it several points, and if it passed it would affect it more. I think some of the stock before that sold at about $140 per share.

Q. How long ago?

A. I should judge a year ago; somewheres about there; a little of it; some 40 or 50 shares.

Q. Now, do you know what it was worth about the middle of January, after the legislature convened?

A. When I heard it whispered that legislation was against them the stock would fall off.

Q. How much was it worth, then, on the 15th of January?

A. I don't just know.

Q. Do you know what it was worth on the first day of February?

A. I do not.

Q. Do you know when this bill passed?

A. I can't give the date.

Q. Do you know when it became a law?

A. I don't know.

924 Q. Do you know what this stock was worth the day before this bill became a law?

A. I think on the Boston market about $135 and there was a sale for $140.

Q. The day before the act became a law?

A. I don't know about the date.

Q. I want to know what it was worth the day before the bill became a law and what it was worth the day after.

A. I don't know.

Q. Do you know what this stock was worth at any time during this year?

A. I think $135. I don't know whether it was prior to the introduction of this bill into the legislature or since.

Q. You don't know what the stock is worth today?

A. I don't; it is down.

Q. You don't know how much it is down?

A. No, sir. I think it must have fallen off at least 25 or 30 points.

Q. When did that fall occur?

A. It has been gradual. You see all the stockholders didn't find out about the legislation at the same time; they are scattered all over the country, and they didn't find out what had happened.

Q. The charges that were made by the stock yards company for yardage and feed would have considerable to do with the question as to the market value of the stock, would it not?

A. Very much, of course, because it affects the earnings directly.

Q. How much would it affect it?

A. I don't know how much the earnings are cut down; if the earnings are cut in two the stock will go below par.

Q. Do you know how much dividend the company paid last year?

A. I think six per cent.

Q. Cash dividend?

A. Yes, sir.

Q Did that include all the earnings of last year?

A. I don't know, but I should think it would not include all the earnings, because they have to keep in reserve quite a sum of money for repairs or construction.

Q. Do you know the value of this stock now? That is the thing I want to know.

A. The last I heard in Chicago it was down very near to par.

Q. That was when?

A. Some two or three weeks ago.

Q. So that the actual value of the property would be about par, as I understand it?

A. I don't know what it would be.

925 Q. Estimating it according to the market value of the stock?

A. The mere market value at the present time might not be a basis as to the value.

Q. How do you get the basis?

A. You cannot reach a basis until you reach the point wherein it is known what the prices are to be charged at these yards. If the bill passed against the yards goes into force and is effective and constitutional, the stock will go far below par.

Q. Do I understand that you estimate the value of this plant, supposing the value of the physical property to be from five to seven million dollars, that the entire value would be three or four millions in excess of that sum?

A. Not if this legislation stands against it.

Q. You estimate that upon the value of the capital stock—the amount for which the stock could be purchased?

A. The amount you would have to pay for the capital stock would be the value to the purchaser of the plant.

Q. Do you know what you can buy the capital stock of the Kansas City Stock Y-rds Company for?

A. I don't know, and I don't think any man on earth can determine that, for the reason that whenever it is known that stock is being transferred largely the stock immediately rises.

Q. Would the fact that the other parties wanted to sell influence the market the same as where purchasers wanted to buy?

A. It would depend upon whether there was enough wanting to sell out to influence the price of the stock.

Witness excused.

926 DONALD MCNEAL PALMER, a witness produced by the complainants, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to direct interrogatories propounded to him by D. R. Hite, counsel for the complainants, testified as follows, to wit:

Q. Where do you reside?

A. St. Louis.

Q. How long have you resided in St. Louis?

A. Fourteen years.

Q. How old are you?

A. 52 years old.

Q. What is your business or occupation?

A. General manager of the Union stock yards.

Q. How long have you been general manager of the Union stock yards of St. Louis?

A. I have been general manager and superintendent for the last fourteen years.

Q. How long have you been acquainted with the stock-yards business in the West?

A. For that period of time; fourteen years.

Q. Are you acquainted with the methods upon which stock yards in the West are conducted?

A. Yes, sir.

Q. Are you acquainted with the property of the Kansas City Stock Yards Company?

A. Yes, sir.

Q. Please state to the special master, Mr. Palmer, what in your judgment and from your experience are the elements which are essential and necessary for the establishment of a successful stock yards, geographical, physical, and commercial.

A. Sufficient room to transact any business that may accrue to the yards, railroad connections, contiguity to a large city, if possible, for the benefit of the packers, and to stock-growing sections of the country; pens not only for cattle that are to be sold, but cattle

that have been sold; chutes for unloading and loading; terminal facilities, water, drainage, a bank for convenience in loaning money to buyers and feeders. The lay of the land also cuts considerable of a figure. I think that about covers the necessary features.

Q. What, in your judgment, is the difference between a stock yards as a market and as a feeding station?

A. There is all the difference in the world. A feeding
927 station—at a feeding station stock is merely put off to feed, water, and rest. At a market, it is put off for sale.

Q. What elements, in your judgment, must necessarily exist in order to the establishment of a first-class live-stock market?

A. One of the most essential features is to have a great number of buyers so as to make a competitive market. That is one of the strongest points. To it is largely due the success here and at Chicago and to the lack of it the failure at St. Joseph and Wichita.

Q. What conditions compose competitive buying?

A. Packing-houses, slaughterers, order-buyers, as they are called—that is, people who come here from foreign markets and buy certain classes of stock and ship them to their customers; dealers who buy stockers and feeders, return them to the farms, *rpien* and return them to the market; then the speculators also, who buy mixed lots of cattle that come into the market and that would not serve any one purpose; the speculators buy them and sell one class to the feeder, another to the slaughterer, and another to the packer; all those things are essential.

Q. What influence, if any, does the presence of packing-houses, export buyers, and the speculators that you have spoken of have upon the receipts of a stock yards?

A. They have everything to do with it; they make the market; they buy the cattle, the stock that comes in, and the more of them the more stock will come in. In order to make a stock yards successful it must furnish a quick market; they don't like to have stock on hand; it shrinks and becomes, as the buyers call it, stale; stock must be sold and got out of the way quickly; the charges must be earned quickly or the shipper won't come back to you; it is in the multiplicity of these buyers that we reach this end.

Q. What appliances are necessary in the conduct of a successful stock yards with reference to the expeditious movement of stock?

A. You have got to have ample alley room to avoid congestion; stock must be handled quickly in all cases; you must have conduits, viaducts, and tunnels if it is possible; all of these things, so that stock can be taken in every direction without delay. If they were all confined to one alley or a few alleys they could only be used by stock going in one direction; you have got to have means of exit as well as of entrance

928 Q. From your knowledge of the Kansas City Stock Yards Company's plant, please state to the special master, Mr. Palmer, whether or not there is, in your judgment, a property value in that plant, irrespective of the land, considered as real estate and the structures considered as structures.

A. You mean in the conduct of the stock-yards business there?

Q. Is there a value there outside of the mere value of the land and *and* the value of the personal property and the structures thereon; in the conduct of the business of the stock yards as a going concern?

A. Why, certainly.

Q. What elements, in your judgment, go to make up the property that is there, exclusive of the lands, the structures, and the personal property?

A. Why, the fact that they have built up and maintained a market, made a demand for all the stuff that comes in here from a great many of the State- and Territories of the Union. I understand from their published reports last year that they received and sold stock from 26 States and Territories of the Union. All of these things have necessitated a vast amount of expense and labor, and not only that, but it has taken time to do it; it cannot be done quickly.

Q. Now, would the selling price of a plant of that character include the price of the intangible property which you have mentioned?

A. Certainly; in the sale of a stock-yards business the purchasers and sellers would consider that.

Q. Considering this plant as a going concern, as an entirety, as an assembling of the various pieces of physical property there, please state to the special master how you would proceed to get at the selling price of such a property as that.

A. I should take *the* first the value of the land down there as near as I could get at it, and then the value of the improvements, with all of these various facilities that have been furnished; I would consider the receipts, the earning capacity under those conditions, the location of the property with regard to the supply from which those receipts could be drawn in the future also; all that would go to make up the value I would put upon the property.

Q. Now, if the property comprising these stock yards were owned by a corporation how would you proceed to get at the selling price of it?

929 A. Why, I would take the value of the stock upon the market as quoted in the centers wherever the stock was sold.

Q. In your judgment, Mr. Palmer, would the market price of the stock indicate with accuracy the value of the plant, considered as an entirety, embracing the intangible as well as the physical property?

A. I should think it was the same with the stock yards as with anything else. The people who deal in those stocks are supposed to post themselves upon all of the features that make stock what it is; it is what they can get for it; it is what it can be sold for that makes the stock what it is.

Q. What does the stock of the stock yards company represent?

A. It represents their holdings in the way of realty and improvements of all sorts, as well as the business. It represents what you expressed as an intangible thing.

Q. Assuming that the physical property, termed here as tangible property of the Kansas City stock yards, is worth from five to seven millions of dollars, please state to the special master, from your knowledge of the business, what, in your opinion, would be the real selling price of the property as an entirety, considered as a going concern with an established business.

A. You mean to take the business and conduct it the same as if it changed hands entirely and the new parties came in and took hold of it, with the business already built up, with all its future possibilities?

Q. Including good will and everything connected with the property.

A. I should say, if the realty was of the value of five to seven million dollars, the plant would be worth nine to twelve million dollars.

Q. From your experience in the stock-yards business, Mr. Palmer, please state to the master whether or not it is necessary to have sufficient room in the handling of live stock to accommodate the wants of the shippers of stock.

A. You should really have more room than your every-day requirements would indicate, so as to be prepared to take care of everything that comes. By way of explanation, let me say that in many cases there are mixed car-loads come in; there may be cattle, sheep, and hogs all in one car. Generally, each of these classes of
930 stock has got to go to a pen by itself the same as if it was a full car-load, so there is one car-load of stock taking up the room of three.

Q. Does that necessitate additional pen-room?

A. It means additional pen-room You cannot mix different kinds of stock; you can't mix one man's stock with another man's stock; you can't mix one man's hogs with another man's hogs, or one man's cattle with another man's cattle.

Q. Is it necessary, in the conduct of a stock-yards business, to keep these pens and appliances in good condition?

A. By all means.

Q. Are you acquainted with the location of the stock-raising portion of the West?

A. Yes, sir; pretty well.

Q. Please state to the master, from your knowledge of the stock-yards business, whether you consider the location of the Kansas City stock yards a desirable one for its business.

A. I think it is peculiarly so.

Q. What would be the result of moving the plant of the Kansas City Stock Yards Company two or three miles away from its present location?

Question objected to and withdrawn.

Q. You spoke of the necessity of having railroad terminal facilities in the successful operation of stock yards.

A. Yes, sir.

Q. Please state to the master more in detail what you mean by that, Mr. Palmer.

A. I mean by that that the more nearly you can come to having stock delivered by railroad companies over their own terminals instead of handling it by means of what is called a belt railroad the better, because every time that you have to make a transfer of stock from one road to another it means delay, and it is in delay that the damage comes to stock. You take cattle, for instance, as long as they are moving there is generally very little trouble about their lying down, or anything of that kind, but just as soon as they stand they begin to get uneasy and uncomfortable, and then the trouble begins, and it means expense and probably death to the shipper. Another thing, in the additional time they are kept in the cars there is an additional shrinkage; and another thing, the early market is generally the best market. The stock-yards business is done quickly; with us it — usually over by three o'clock, and often by one o'clock. Stock which is put on the market early
931 generally does better than that which comes on later. Consequently the more direct the means of communications with the unloading chutes, the better it is for all concerned.

Q. Would you say that the addition of a mile or two miles would make any difference in the successful carrying on of stock yards? That additional distance from the railroad tracks?

A. I think it would make a decided difference.

Q. What have you to say in that connection with respect to the distance from the packing-houses that you spoke of?

A. The same condition prevails exactly. The longer the drive to them the worse it is, and the nearer they are to the point at which the cattle are turned over to them after they are weighed the better they are off.

Q. Are you acquainted generally with the location of the Kansas City stock yards with reference to railroad terminals?

A. Pretty well; yes, sir.

Q. Are you acquainted with their location with reference to packing-houses?

A. Yes, sir.

Q. Do you consider their present location as a desirable one for their business?

A. Exceptionally so.

Q. Geographically speaking with reference to the stock-raising district, is the location of the Kansas City stock yards a desirable one?

A. They are one of the best in the country.

Q. What has been the tendency of the packing industry with reference to its moving from the East to the West?

A. It has been to get nearer to the corn-growing sections all the time. It is within my recollection when Cincinnati was spoken of as Porkopolis. Then it came to Indianapolis, then to St. Louis, now to Kansas City. This is pretty near as far as it can go, because you are pretty close to the edge of the corn belt. The nearer stock can be marketed and killed to where it is fattened the better.

Q. What does that condition grow out of with reference to the movement of cattle being shorter or longer on the cars?

A. I do not know that I understand clearly what you mean, Mr. Hite.

Q. I mean, can cattle be transported from the West to the
932 East as well *well* as dressed beef can?

A. No; they cannot. If they could, the shipping of the dressed product would not so nearly have driven out the shipment of the live cattle as it has done.

Q. How long have you known and been acquainted with the operation of the Kansas City stock yards?

A. For the last 12 years.

Q. Are you acquainted with the stock yards and the stock market at Omaha?

A. Yes, sir.

Q. At Chicago?

A. Yes, sir.

Q. At Indianapolis?

A. Yes, sir.

Q. At Cincinnati?

A. Not so much at Cincinnati, only in a general way.

Q. Of course at St. Louis?

A. Very well.

Q. How does the market afforded at the Kansas City stock yards compare with the markets elsewhere?

A. Well, the market at Kansas City is a mighty good one. It is a good strong market. I can speak from our experience. We have at times had to buy cattle and hogs to maintain our yards down there. We have had a mighty hard fight for existence. We have never been able to buy cattle and hogs here and resell them down there for any length of time without loss; sometimes a very heavy one.

And in answer to cross-interrogatories propounded to him by Mr. Boyle, attorney general, the witness testified as follows, to wit:

Q. Where is the corn belt? What is the corn belt, Mr. Palmer; what section of the country does it cover?

A. Well, take it through Illinois, Missouri, eastern Kansas, Nebraska, and Iowa.

Q. Those States furnish the great bulk of the corn?

A. You don't find very much of it west of here.

Q. Which one of these markets is nearest to the corn belt?

A. Well, Kansas City, I should judge, and Omaha, possibly.

Q. Well, Omaha would be at the western limit?

A. I should think it would be pretty nearly at the northern end of it, although they do raise pretty good corn north of there.

Q. Which of all of these markets do you think *it* nearest
933 and most accessible to the corn belt?

A. Well, I should say that Kansas City and Omaha are nearest to the great corn belt, the great corn-growing sections of the country.

Q. What are the elements which go to make up a desirable location for a stock yards independent of these packing-houses and so forth? I mean geographically.

A. You mean as regards the physical condition of the ground, the lay of the land?

Q. No; I mean contiguity to the cattle ranges and to the corn belt, and things of that kind.

A. Well, as I stated in my direct testimony, the tendency has been to take the markets nearer and nearer to the great corn-growing sections of the country, as evidenced by the moving of the packing centers from Cincinnati gradually west.

Q. Kansas City is a more favorable location in that respect from a geographical standpoint than almost any other market in the country? Is it?

A. It is more favorably located in this respect, that it is nearer the western edge of the belt, and consequently there is not much danger of competition west of them coming in. Then the railroad facilities which Kansas City has I think make it next to Chicago. It is next to Chicago the greatest market in the world.

Q. You think that Kansas City next to Chicago is the greatest market in the world?

A. No question of that.

Q. That which makes it such a great market is that it — close to the corn belt, besides these other things?

A. That is one of the things that has helped to build the market.

Q. Well, nature or God Almighty put the corn belt here, didn't He?

A. Yes; I guess He did.

Q. The stock yards company didn't do that?

A. No; the stock yards company didn't do that; they merely took advantage of it.

Q. When you say that the plant of the Kansas City Stock Yards Company is favorably located near the corn belt, do I understand you to mean that that is where the cattle are ranged and fed, or what is the advantage to the company of being in the corn belt?

A. Cattle and hogs are ripened there and made ready for the market.

934 Q. Then they have not so far to go as they would to a market which was more remote from the corn belt?

A. No, sir.

Q. Is that one of the things that enters into the value of the plant down there?

A. Certainly.

Q. What are the considerations which enter into the choice of a shipper as to the market which he will patronize?

A. The market that he can get the most out of.

Q. Does the fact of the nearer market to his place of shipment have something to do with his choice?

A. Yes; prices being even, because there is less shrinkage.

Q. Other things being equal, he will go to the nearest market.

A. Understand, now, when I say market I mean not only where

there are facilities for unloading, but I mean where there are buyers and a competitive market.

Q. Take a stock-yards plant that built up around it large packing-houses as here at Kansas City, St. Louis, and other places, a shipper who has cattle that he desires to market will take the nearest market that he can get to when that market offers him prices that are equal to other markets, all things being equal?

A. Yes, sir.

Q. All of these things which I have enumerated and which are due to the geographical location of the Kansas City market are things that nature has provided, and that these people have taken advantage of in placing their yards here? Is not that true?

A. Yes; they have taken advantage of the means that nature affords.

Q. Do you mean to capitalize that advantage; do you think that they should have, outside of all their physical property and everything else, that they should be given credit also for these things that nature has done for them?

A. Yes, sir; I think they should.

Q. What position do you occupy in the St. Louis stock-yards corporation?

A. I am general manager.

Q. How long have you been general manager of that corporation?

A. I have been general manager and superintendent for 14 years.

Q. The Kansas City market is a better market than the St. Louis market, is it not?

A. Yes; it is.

935 Q. Does it handle more cattle?

A. A good many.

Q. And more hogs?

A. Yes; and more sheep.

Q. And make more money?

A. Naturally, because they do more business.

Q. Being nearer to the corn belt and to the people who ship this stock and having all of these advantages, they naturally have a better market and they naturally get more business?

A. Yes; that is the result of their own efforts to a great extent.

Q. Of course, in combination with nature?

A. Yes, sir.

Q. Are there any other stock yards in Missouri?

A. No; not in Missouri; there are two sets of yards in St. Louis, one on the Missouri side of the river and the other on the Illinois side, in East St. Louis; there are some yards at St. Joseph, too.

Q. Do you know anything about the charges which they make down here in the Kansas City stock yards?

A. Yes, sir.

Q. Are they greater or less than you charge?

A. The same; all of the stock-yards charges are the same at Omaha, Kansas City, St. Louis, East St. Louis, and Chicago—that

is, as far as I can speak from my own knowledge; they are all uniform; not by any agreement; there is no agreement.

By Judge MARTIN: It is tacit?

A. I suppose they think if one can get it they all can get it. I have been in the business fourteen years and we have never consulted with any other yards about charges.

Q. If some other yards would come down, you would?

A. I don't know that we would.

Q. You couldn't afford to do so?

A. No; we couldn't afford it.

Q. You think you could not afford to operate under the rates that the Kansas legislature has made?

A. No, sir; we would shut our gates the next day if a law of that kind was passed in Missouri; we would not attempt to do business under it.

Q. That is the reason you think the Missouri legislature should not pass the proposed legislation over here, that you could not afford under those conditions to do business?

A. Yes, sir; that is the reason that we offered, and for the last six sessions I have succeeded in getting the legislature to see it that way.

936 Q. I should think you would get them convinced over there?

A. We have got them convinced, and it took nothing but good, straight talk to do it.

Q. There was some attempt to have some stock-yards legislation in Missouri lately?

A. Yes, sir; and there has been at every session of the legislature for a long time.

Q. You are interested in maintaining the prices and rates charged now, are you not?

A. Certainly, because we could not live if they were lowered.

Q. How much more business does the Kansas City Stock Yards Company do than you do?

A. Oh, they do more business in a week than we do in a year.

Q. We rather think that they could stand these new rates; how do you feel about it?

A. I don't think they could; the reduction is so great it is folly to think of attempting to comply with them under the margin of profit which would be left to them under the proposed reduction.

Q. You do not think they could make any profit under this proposed reduction?

A. I do not think they could make any profit that anybody in any other line of business would be content with. I don't believe there is a farmer who would buy cattle to feed unless he thought he could turn them at a better figure than the company will get on its business under this law, in my opinion.

Q. Do you think that five or six per cent. would be a fair return upon a valuation of five or six millions of property, Mr. Palmer?

A. I do not think that in an industry of this kind they should be satisfied with five or six per cent.; it is an irregular business. Sup-

pose the crops should fail as they have done in Nebraska; look at the difference it has made in the stock-yards business in Nebraska; it is felt very quickly. It is more in the nature of a manufacturing enterprise.

Q. The Kansas City Stock Yards Company has never failed during all of these hard times?

A. The stock yards company got out and hustled; what they lost in one direction they made up in another; when crops failed in Kansas and Nebraska, and their receipts fell short from there, they went into St. Louis territory, into Texas, and made it up
937 there.

Q. And made their money?

A. Yes, sir. They ought to make it. They worked for it.

Q. They have developed this business in such a way that you people down there cannot compete with them very well.

A. We are not in it with Kansas City; I will acknowledge that.

Q. Do you think with this large increased volume of business, Mr. Palmer, that they have there, the favorable location with respect to the corn belt, and the shipping point which they have, that with their great industry and the ingenuity they have displayed, do you think they ought to charge as much as you people do? Don't you think they could afford to do business for a little less?

A. I don't see how they could. We are not making any money, and have passed the point where we are trying to do so. All we are trying to do is to keep and maintain our plant, as the city is growing up around it. We have passed the point where we pay dividends. We haven't paid a dividend for two years. There is a certain point below which your fixed charges cannot well be reduced. Above that point your profits come in. That is the condition that Kansas City is in.

Q. We will say that they have put in three millions of dollars, and that they have been paying dividends on six millions or seven millions for the last few years. Don't you think that is a pretty good investment for money, Mr. Palmer?

A. They may have had some advantage of enhanced value of their realty, and they are entitled to earn upon that as well as any other land.

Q. Don't you think it indicates pretty good earnings?

A. They are doing very well, and I guess they will be satisfied if you will let them alone.

Q. You say that the premium on stock determines in a measure the selling price of the property?

A. Yes, sir.

Q. And that the intangible something that we call good will would be worth this premium over and above the par value of the stock?

A. I think that the valuation that is put upon a stock by the people that make it their business to buy and deal in stocks
938 is the best criterion of its value.

Q. It is the criterion for this thing called good will?

A. Yes, sir. I think, perhaps, that your understanding and mine

of good will do not run in the same channels exactly. Your idea of good will seems to be a sort of good-fellowship. My idea of good will is taken from a trade standpoint. It means an established business. A man may have a good will with his business and yet have the enmity of the people who do business with him.

Q. I wish you would tell us what you mean by good will.

A. I mean by good will that it is the value of the business that has been built up to a certain extent and is in a condition to pay a respectable dividend or reasonable earnings on its capitalization, whatever that may be, over and above the actual value of its tangible property.

Q. The dividend-paying ability of stock is one of the principal things that determines its market value, is it not?

A. Yes; unquestionably.

Q. And that dividend-paying ability is what you would determine to be the good will of the plant, naturally and necessarily, from your conclusion?

A. To a very great extent.

Q. Now, Missouri Pacific stock was selling on the market a few months ago at fifty cents. It is now selling for 15 or 17 cents. What has caused the depreciation in that stock of the Missouri Pacific, Mr. Palmer?

A. Has the Missouri Pacific been paying dividends?

Q. No.

A. Any possibility of it?

Q. I don't know. Has the good will of that company depreciated?

A. Why, the good will of that company has certainly depreciated if the earnings of the company have depreciated. There is talk lately of the Missouri Pacific going into the hands of a receiver, and the stock of the company being wiped out, and that scares people. Nobody wants to put money into it under those conditions.

Q. Is that what you understand by the good will of the Missouri Pacific? It has got the same connections that it had before. It has the same territory through which it runs. It has the same relations now with the business world that it had before, and yet its stock has decreased in the market. Now, you say that when that happens its good will is correspondingly depreciated?

939 A. If you can speak of a railroad as having a good will, I presume the good will of the Missouri Pacific has depreciated from this very fact. It has no dividends, shows no chance of them. The probability is, according to newspaper reports, it is going into the hands of a receiver and the stock of the company being wiped out. Nobody wants it.

Q. You say that one of the principal points that constitutes the value of the stock yards is the presence of buyers on the market. Now, is it not the principal point to have cattle to sell?

A. Well, you couldn't sell if you didn't have buyers.

Q. But both of these things must necessarily coincide?

A. Certainly; but you must have somebody to buy the cattle. If

you didn't, the owner would take his cattle back the next day and never come back again.

Q. But the packing houses, buyers, and stock yards wouldn't flourish very long if there were no cattle?

A. No; nor we couldn't eat meat unless you killed it yourself.

Q. You say that these people here do more business in a week than you do in a year, and yet they charge the same prices that you charge?

A. Yes, sir.

Q. What are the elements of expense that the Kansas City people have to stand that you people in St. Louis don't have to stand?

A. Their investment, to begin with, is several times larger than ours.

Q. What investment do you speak of?

A. The investments in grounds and buildings for one thing.

Q. Do you know what their investment is in grounds and buildings?

A. I know approximately how many acres they have and I have seen what buildings they have.

Q. Do you know how much it has cost them to put them there?

A. No, sir; but I know what it has cost us to put up our yards and to maintain them.

Q. What has it cost you to purchase your lands and put up your buildings?

A. Our land we value——

Q. Not what you value it. What did it cost?

A. It was bought before I went there. I couldn't tell you.

Q. You don't know what it cost the St. Louis stock yards?

A. Not of my own knowledge.

940 Q. You have a way of telling, possibly, what the land has cost?

A. It would be really hard on my part to do so, because the stock yards have been in operation for 23 years and I have only been there 14 years.

Q. You do not know what it cost the Kansas City Stock Yards Company to buy their land, do you?

A. No, sir; I do not.

Q. What other difference would there be, then?

A. As I say, there would be the cost of maintenance. I know that their buildings, in comparison with ours, must have cost several times as much. Their force is necessarily several times greater.

Q. What buildings have they that you have not?

A. They have an exchange building that is ten times as big as ours for one thing.

Q. And they get possibly ten times as much revenue out of it?

A. Possibly they do.

Q. So that that would not enter very much into this question of the charges that they and you make?

A. They have got to hire a great many more men in all these capacities and all of their expenses are greater. You might as well

say that you could run a thread and needle store as cheap as Bullene, Moore & Emery's store.

Q. Not at all, but Bullene, Moore & Emery have correspondingly as large income as the thread and needle man. I don't know.

Q. I suppose the more money you make the more—are you people losing money?

A. We are not making any.

Q. Are you losing any?

A. We are keeping about even.

Q. How many men do you employ?

A. Altogether?

Q. Yes.

A. I guess about thirty or forty men.

Q. How many cattle do you handle?

A. Our receipts of cattle lately have not run up to a thousand a week.

Q. But you are keeping even?

A. Yes; we have got several strings to pull.

Q. It keeps you hustling, but you manage to keep even?

A. It is hard work to keep even.

Q. If you are keeping even on the small business that you do with the necessary expenses that you have to incur, the Kan-
941 sas City Stock Yards Company must be on Easy street, as the boys say?

A. I expect they are, and they want to stay there.

By the MASTER: I would like to know how you estimate the business of the Kansas City Stock Yards Company to be worth from two and a half to five million dollars?

A. I do it in this way: I take the expense that it would be put to to build up the business to present conditions. They are getting greater and greater all the time.

Q. How much would that be?

A. It depends entirely upon how much you choose to make it, how liberal your ideas may be. It may cover an agency at every shipping station in all of these towns.

Q. How much would it cost to make that business worth from two and a half to five million dollars; the business that is established now and being operated by the Kansas City Stock Yards Company?

A. I don't believe it could be done for two or two and a half million dollars. You have got a business there from which you are getting a revenue today. You haven't got to wait ten or fifteen years to build it up.

Q. I think it is worth something, but I want to know how you estimate the value of it?

A. By the cost that the company would have to incur to build the business up to its present conditions of earning power. I don't think you could do it for less than two million and a half. Take it in our own experience. We have spent every dollar that we could afford to spend in bringing business to our market, and lately it costs us as much to get it as we can get out of it. I think it

reasonable to say that the present earning power of these yards could not be brought about for less than two or two and a half million dollars expense.

Q. Can you give any of the items entering into that, or is it a matter of speculation as to what the business of the Kansas City Stock Yards Company is actually worth, now you are considering the tangible property to be worth from five to seven millions. Now, what is the tangible and intangible property worth?

A. The tangible property is said to be worth from five to seven and a half million dollars. With the intangible part, I would put it at from nine to twelve million dollars.

Q. As the total value?

A. Yes; to bring it up to its present net earning capacity today.

942 Q. What I want to know is how you figure out from two and a half to five million dollars?

A. We will say part of that; we will say two and a half million is actually expended for agents.

Q. How many agents?

A. If it is here as it is with us, every man who ships a car-load of stock wants me to make him an agent; every man who ships a car-load of stock to a yard company wants it to put him on a monthly salary based on what he can do. Very often arrangements are made with railroad agents at local points who can throw the scale one way or the other, to Chicago or to us.

Q. Did you ever figure on what it would cost to establish a business at the Kansas stock yards as it is now, if you had the tangible property?

A. Just as I say. I base it on a mental calculation. I can base it *it* on what it costs us to get our own business, where we are able to get it.

Q. But conditions are not the same here as at St. Louis?

A. You are supposing that this business is wiped out, and you are beginning from the bottom to build up the conditions which now exist. I say it would cost all that I have said.

Questions by Mr. BOYLE:

Q. Do you have any experience in your yards of shippers feeding in the yards?

A. Oh, yes; lots of them, especially since they have got these patent cars. They throw the hay into them and let the cattle eat as they come in. Our feed does not run half as much as it did ten years ago.

Q. What do you charge for hay?

A. $20 a ton for prairie hay and $30 for timothy.

Q. Prairie hay costs less?

A. Yes, sir.

Q. Is there any difference between the market here and at St. Louis on prairie hay?

A. I don't know; perhaps some little difference in freights. I imagine their hay here costs them about the same as ours. We do

not feed the rank prairie grass. We have to have upland grass. We get it from the Indian Territory. The freight is nearly the same on the short haul as on the long haul.

Q. Is there any complaint among your people as to charges on feed?

943 A. Yes; they object to it. Let me explain something about this feeding business. No shipper feeds his stock from humanitarian principles. He feeds simply to get the weight. He feeds a bushel of corn to a car-load of hogs, and those hogs will drink four pounds of water to the hogs, which costs him nothing. It is a common thing to hear the shipper say, I will sell you this stock at such a time, which is long enough to enable him to get the stock filled. It goes on the scales, and he gets four cents a pound for that water.

Q. How is — as to the man who buys the stock?

A. He don't like it at all.

Q. He gets the worst of it every time?

A. Yes; they get it run into right along.

Q. Does it cost you as much for water in St. Louis as it does here?

A. It depends on how you get it here. We pump our water right from the river; we have a river front. If we had to buy it by meter it would probably cost more, but if a man feeds on the cars he get- water without paying for it.

Q. The yardage is 25 cents per head?

A. Yes; that is the survival of an old custom. If the 25 cents yardage had been divided up so that it would show as so much for yardage, so much for water, handling, weighing, loading, and unloading—one cent here, two cents there, and so on—you gentlemen would never have been here holding this session this afternoon.

Q. This added weight is not taken into consideration by the buyer at all?

A. Not at all.

Q. They testify differently here.

And in answer to redirect interrogatories propounded to him by D. R. Hite, counsel for the complainants, the witness testified as follows, to wit:

Q. About feed. You say you get $1.50 per cwt. for timothy hay?

A. Yes, sir.

Q. A dollar a bushel for corn?

A. Yes, sir.

Q. What service do you render for that?

A. We render all the services. The stock is cared for—penned, handled, watered, fed, yarded, and given the advantage of the market.

944 Q. Now, you speak of the benefit that the shipper gets from the market. In this yardage charge that you charge he pays for the privilege of exposing his stock for sale at your market, does he?

A. He does not pay anything unless the stock is sold in the yards; the yardage charge is not earned unless the stock is sold. A

man may come in there from some interior point in Missouri, with the privilege of our yards, and if he doesn't like the price and says, I will go on to Chicago, we load that man's stock back into the cars again and send it forward, and it doesn't cost him a cent; he doesn't have to touch it, and has the benefit of our market, and if he doesn't feed it does not cost him a cent for any purpose.

Q. You charge 25 cents a head for cattle?

A. Yes; 10 cents for hogs, eight cents for calves, and 5 cents for sheep.

Q. Do you consider those charges fair and reasonable?

A. Perfectly. I think the more you will study the question—the more thoroughly conversant you become with the question—the more reasonable the charges appear to you.

Further cross-interrogatories by Mr. BOYLE:

Q. You say you drive the cattle from the trains to the pens; from the pens, if they are sold, to the scales, and from the scales back to the pens, and if the cattle are sold and are to be shipped you drive them from there to the loading chutes, and you do all this for the one charge of twenty-five cents?

A. Yes, sir.

Q. And the feed charges, if the stock is fed?

A. Yes; that is optional with the shipper.

Q Do you get anything for loading and unloading stock?

A. Not from the shipper.

Q. Do you get it from the railroad?

A. Yes; we get 25 cents a car.

Q. Who pays that?

A. The railroad company. We perform that work for them that they would otherwise have to perform themselves, and not only that. As soon as a railroad company unhitches its engine from a car of stock they hold us responsible for the charges; if the agent in the country makes a mistake in the tariff and we fail to
945 detect and correct it they hold us responsible. We do an enormous amount of work for that 25 cents.

Q. Do you unload the cattle out of the car?

A. Yes, sir.

Q. Do your men do that?

A. Yes, sir; always; they never touch them; they come out with the stock, whistle, cut off their engine, and our men unload the stock, put it in the pens, and take care of it.

Q. For twenty-five cents a car?

A. Yes, sir.

Q. You do what?

A. We do everything after that; we take the responsibility for the freight, for instance; the railroad company does not collect the freight from the shipper; we do that; we revise the billing. These country agents sometimes make mistakes and we correct them, and instead of holding him for it they hold us for it; that is our contract with the railroad companies, an actual written contract; and

not only do we assume the responsibility for collecting the correct charges, but if stock is damages in any way the owners look to us and not to the railroad company. We assume a great deal of responsibility and do a great deal of work for nothing.

Q. When does the stock come into your possession?

A. Just as soon as it is backed up to the chutes and left there—as soon as their engine leaves it.

Q. When does the stock come into the possession of the railroad company after it is sold?

A. After they have hitched onto it and pulled it out.

Q. Do you feed much timothy hay?

A. No, sir; sometimes a shipper will order it, but generally it is regarded as a luxury; prairie hay is usually regarded as good enough, but sometimes a man will think that his cattle are entitled to a little more consideration and wants timothy hay and we give it to him.

Witness excused.

946 WILLIAM N. BABCOCK, a witness produced by the complainants, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to direct interrogatories propounded to him by D. R. Hite, counsel for the complainants, testified as follows, to wit:

Q. Where do you reside?

A. Omaha, Nebraska.

Q. How old are you?

A. Fifty.

Q. What is your occupation?

A. I am general manager of the stock yards at Omaha.

Q. How long have you been in the stock-yards business or connected with it?

A. Eight years.

Q. Are you acquainted with any stock yards in the West outside of the Omaha yards?

A. Yes; I have an acquainted with the yards at Chicago, Kansas City, St. Joe, St. Louis, Missouri, and St. Louis, Illinois.

Q. Do you know anything about the stock yards located at St. Joe?

A. Yes.

Q. Has your connection with stock yards been such as to familiarize you with the method in which they conduct their business?

A. Yes, sir.

Q. Please state to the special master what, in your opinion, are the elements which enter into the establishment of a successful stock-yards business, elements geographical, physical, and commercial.

A. Location in the neighborhood of a stock-producing corn, the construction of numerous pens and alleys, scales in order to weigh the stock, a system of water pipes and sewerage; that includes also drainage; the location of packers as well as the location of other

buyers for the purchase of live stock on the market who may be buyers for export or reconsignment to other markets or for reshipment into the country for feeding purposes; all these elements go to make up that which is necessary for the construction and operation of stock yards.

Q. You spoke of the location of packing-houses and railroad terminals adjacent to the stock yards. Are those things in and of themselves always sufficient to bring about the successful establishment of a stock-yards business?

947 A. Not entirely. I failed to include in my answer good and sufficient railroad terminals; they are very essential to the successful operation of stock yards. Besides the items mentioned, I would say that commissionmen for the sale of stock, the establishment of moneyed institutions and banks for the ready payment of stock that may be sold on the market, and the loaning of money for the payment of stock that may be purchased for feeding purposes are necessary adjuncts to the market.

Q. With reference to the capacity of a successful stock yards, what have you to say as to the amount of ground necessarily taken up by pens, alleys, chutes, and other appliances as compared with the amount of stock that is to be handled?

A. It is almost essential that the stock yards should have a capacity about double the nominal demands of the receipts.

Q. Why is that the case?

A. Cattle will come in mixed classes in a car or a train. There may be some steers, some cows, and some bulls, and there might be different classes of each with respect to size and condition of flesh, and that would make it necessary to provide separate yardage facilities for each particular class of animals in that one car; or if the animals be all of one class they may be bought in two or three different lots by different buyers and each lot be yarded separately, and therefore require additional room. Then large pens must be provided for bunching together the purchases of the various large purchasers.

Q. And those pens must be provided in different parts of the yards?

A. Yes, sir; requiring double the space in order to handle the stock.

Q. What is the fact, Mr. Babcock, with reference to any competition in the stock-yards business in the West?

A. There is very sharp competition among the stock yards located in the West. Competition is carried on by solicitors in the field, by advertising, and other means that can be brought about legitimately to secure business for the yards.

Q. You said something about the necessity of buyers in the successful establishment of stock yards. What influence upon the business of a stock yards company does the existence of a first-class quick market for the sale of stock have?

A. It has a very great influence. If you have a quick active market, so that the stock is unloaded quickly, put into the pens so that the buyers may be active in making their purchases, you will

not only please the shippers, but you also reduce his lia-
948 bility to loss on account of the shrinkage which may occur while the stock is in the yards. On the other hand, if you have very few buyers in the yards, who become possibly on account of their number indifferent, the market drags, and the shippers become dissatisfied, and they will seek some other market. If that condition should exist in one of the Missouri River markets, while the other was bright and active, it would give the business to the latter yard.

Q. When you say a bright, active market does that, in your opinion, have any effect upon the prices which are paid—that is to say, is a quick market usually a higher market or a lower market?

A. An early market is generally speaking the best, and a quick, active market would be the best, too.

Q. What inducements prevail among shippers with reference to where their live stock ought to be shipped?

A. They take into consideration the standing of the market as a market, as explained by me, and the prices they hope to realize on their stock.

Q. What, if anything, is necessary in the carrying on of a successfully established stock yards as to the expedition with which cattle and other stock *is* handled?

A. After arriving at their destination at the stock yards, it is essential that the stock should be taken from the cars at the earliest possible hour and unloaded into the yards as expeditiously as possible. In order to do that, large space, large driveways, large alleys, viaducts above, are necessary for the successful handling of the stock through the yards.

Q. What, if anything, is the effect upon live stock of loading and unloading it several times?

A. It is a detriment to stock every time it is put into or taken out of a car. They are liable to be bruised, and that will depreciate the value of the animal.

Q. You said, Mr. Babcock, that it was, in your opinion, one of the elements that was necessary to the establishment of successful stock yards that the stock should be unloaded directly from the road that brought it to the yards. Will you please state why that is so, why it would not be just as well to unload the stock from a belt line or switching road?

949 A. I don't think I said they should be unloaded from the direct line; Mr. Palmer said that, but I said this: that stock of any kind coming in off the road is more or less weary at all times, particularly so with cattle, and if they are allowed to stand on the side track for any length of time at their destination they will begin to lie down, and then the moving of the train will cause them to trample upon each other and will damage them, and is liable to cripple them, if not kill them; hogs when allowed to stand on the track after reaching their destination are inclined to pile on top of each other and smother each other, oftentimes causing loss to the shipper; therefore it is essential that the stock should reach its des-

tination and be taken care of immediately and released from the cars in order to save loss to the shippers.

Q. You spoke of having packing-houses adjacent to the stock yards. Please state to the special master whether the nearness of the packing-houses to the stock yards is, in your judgment, essential to their successful establishment.

A. It is essential for the reason that stock after being once confined and put into cars and shipped to the yards and passed through the usual maneuvers of buying and selling shrink in weight; now, the movement of cattle or hogs for any great distance will cause them to shrink and lose in flesh and cause loss in value.

Q. State, if you know, what the tendency has been of late years with reference to the movement of stock yards from East to West.

A. The tendency is from the East to the West—that is, the tendency of the slaughtering of cattle, hogs, and sheep; it is done more in the West than in the East in the last ten years.

Q. What, if anything, is essential with reference to the geographical location of stock yards near the corn belt?

A. It is to be near the point where cattle are fed; therefore when they are ready for market it lessens transportation and lessens the shrink.

Q. Are you acquainted with the stock yards and the stock market at St. Joseph, Missouri?

A. Yes, sir.

Q. Is that near the corn belt?

A. Yes, sir.

Q. Is that a successful stock market?

A. No, sir.

950 Q. Why?

A. As a matter of criticism I do not think it has put forth the necessary energy to build up a market.

Q. St. Joseph possesses the same elements to make a stock market that Kansas City does?

A. It has, I believe, three packing-houses located there; they have yards that are well located and adapted for the business; they are in the edge of the corn belt and as well located with reference to the corn belt as Kansas City, but still they have never had the business. While packing-houses are essential to the building up of a stock market, it does not always follow that they make a market; it requires a good deal of energy and push, determination, and faith to build up a yard.

Q. Does it require any money?

A. And money; yes, sir.

Q. Are you acquainted with the plant now owned and operated by the Kansas City Stock Yards Company?

A. Yes, sir.

Q. Please state whether, in your opinion, the plant of the Kansas City Stock Yards Company is well adapted for the purposes of a stock-yards business.

A. I think the geographical position of the Kansas City stock

yards is first class for the purposes for which the yards were constructed.

Q. What is your judgment with reference to the situation of the Kansas City stock yards with respect to the cities of Kansas City, Missouri, and Kansas City, Kansas—that is, being adjacent to those large cities; is that an advantage or not?

A. That is quite an advantage for the reason that being adjacent to a large city it affords a market for the distribution of a certain amount of the product of the packing-houses, and is of direct benefit to the packing-houses as well as of the stock yards. Another advantage of being adjacent to a large city is that it enables the packing-houses and the yards to get their employés close at hand at the current wages paid for such service at all times to keep the works going.

Q. From your knowledge of the plant of the Kansas City Stock Yards Company, please state whether or not there is, in your opinion, a value to that plant, considered as an entirety, as a
951 going concern, irrespective of and over and above the value of the tangible property such as real estate considered as land and the structures considered as structures and whatever material is there considered as material.

A. I consider that the successful handling of the Kansas City stock yards has placed a value upon the property over and above the physical cost of the same.

Q. State what, in your opinion, is the value of the Kansas City Stock Yards plant, considered as a unit, an entirety, as a system of stock yards, and as a going concern, assuming that the value of the tangible property is from five to seven millions of dollars.

By Mr. BOYLE: I object to the question for the reason that the witness has not been shown to be competent to testify on the subject.

Q. How long have you been acquainted with the plant of the Kansas City Stock Yards Company?

A. I have been familiar with it during the last eight years.

Q. Have you been acquainted during that time with the volume of their business and the character and value of the market afforded by them?

A. Yes, sir.

Q. Are you acquainted with the railroad facilities possessed by the location of the Kansas City stock yards?

A. Yes, sir.

Q. And with the packing-house industries?

A. Yes, sir.

Q. Are you acquainted with the value of the business of stock yards in the West?

A. Yes, sir.

Q. Now, please state what, in your opinion, if you know, is the value at the present time of the plant of the Kansas City Stock Yards Company, considered as a unit, an entirety, as a system of stock yards, and as a going concern, assuming that the value of

the tangible property at the present time is from five to seven millions of dollars.

Mr. Boyle objects for the reasons last stated. Objection overruled.

Q. If the tangible property as a unit would be valued at from five to seven million dollars, I would judge the value of the property to be at least 33⅓ % more than that.

Q. Please state to the special master whether or not you take into consideration, in fixing the value which you do fix of eight to nine and a half million dollars upon the entire property—you
952 consider what would be the selling price of that plant, considered as a unit and a going concern.

A. That would be the basis of my calculation.

Q. Now, please state to the special master how you, as a man engaged in the conduct of a stock-yards business, would arrive at the selling price of the plant of the Kansas City Stock Yards Company, considered as a unit, an entirety, and a going concern.

A. The value of the Kansas City stock yards should be taken upon the expenditures that might have been made in order to make the construction and to build up the business and the yard itself. The purchasing price of this property would be based upon what this property might be purchased for on the market from the people who are the owners of its stock.

Q. Do you mean the stock in the aggregate—to take all the stock at its market value, would that represent what you mean by the selling price?

A. I understand the stock yards company has a certain number of shares of capital stock, which are quoted at a certain price. I have no idea that any man or syndicate could go into the market and purchase the control of this stock for that figure. In other words, he would have to pay a premium over and above what it was quoted at on the market.

Q. Do you consider that the market price of the stock, taking it over a period of years, affords the best criterion for the valuation of the property of a going concern?

A. I do.

Q. Please state to the special master what elements enter into your judgment as to the value of the intangible property of the Kansas City Stock Yards Company.

A. Its location, its ability to do the business, the knowledge of the market, knowledge of the States and Territories from which the business comes, and the market.

Q. What, in your opinion, would be the expenditures necessary to create a business such as you have testified to is now owned and possessed by the Kansas City Stock Yards Company, starting with the tangible property which it now possesses and without that business? How much money would it take to create the business that it now has?

A. I don't know that I would be prepared to say how much money it would take, but I know from my own experience that it

takes a great deal of money to send out men into the field to build up a stock-yards business.

953 Q. How long after such a business were started, Mr. Babcock, in your opinion, would it be before such business would arrive at an earning capacity equal to that possessed by the Kansas City Stock Yards Company?

A. Well, it would take a good many years.

Q. Would there be any expenditure during those years and any necessity of business ability, industry, and wisdom?

A. A great deal of it.

Q. And money?

A. Money early and late.

Q. I believe you said that the competition among western stock yards is very great?

A. Very sharp.

Q. Would that question of competition enter into the question of the necessary expenditure of money by such a concern starting before it would arrive at the place the Kansas City Stock Yards Company now occupies?

A. Yes, sir.

Q. Is that competition greater now than it was during the period of ten years ago?

A. Very much so.

Q. Does it grow in sharpness and activity?

A. Day by day, and speaking again of the St. Joe yards, with all deference to the yards and to the owners, I don't think that with all the energy they can throw into it that they can in a natural life build up the business equal to that of Kansas City.

Q. Are you acquainted with the charges which are made by the various stock yards companies throughout the West for the services rendered?

A. Yes, sir.

Q. What charges are made by the St. Joseph yards?

A. 25 cents a head for cattle, eight cents a head for hogs, ten cents for calves, and five cents for hogs.

Q. Are they the same prices charged by stock yards generally?

A. Yes.

Q. In your opinion are those charges reasonable and fair?

A. Yes, sir.

Q. Are those the charges which prevail at the Omaha yards?

A. Yes, sir.

Q. Are the charges which prevail at the Kansas City stock yards, in your opinion, fair and reasonable for the services rendered?

A. Yes, sir.

Q. Please state to the special master what, in your judgment, is the value to the shipper of the market which is afforded by

954 the Kansas City Stock Yards Company reckoned in yardage.

Question objected to and withdrawn.

And in answer to cross-interrogatories propounded to him by Mr. Boyle, attorney general, the witness testified as follows, to wit:

Q. What position do you hold in the Omaha yards?
A. General manager.
Q. There is a suit pending against your company similar to the one which is pending against the Kansas City Stock Yards Company?
A. There will be a suit. I don't think it is started yet.
Q. Don't you know that a suit has been already brought?
A. I do not fully understand it that way. I know suit will be brought. I know that complaint has been made by a stockholder, but I don't think the papers have been filed to enjoin the attorney general from putting the new rates into force. I know we have been instructed by the president and directors to put the new rates into effect.
Q. Then you know that a stockholder is about to make complaint?
A. Yes.
Q. Have you put the new rates into effect?
A. The bill does not take effect until the 10th of next month.
Q. How long have you been general manager of the company?
A. 8 years.
Q. How old is that plant?
A. It is in its 18th year.
Q. How much business do you do compared with the Kansas City Stock Yards Company?
A. About half as much.
Q. How much do you do as compared with St. Joseph?
A. I don't think St. Joseph has started in the race.
Q. St. Joseph does very little business?
A. Very little business.
Q. Upon the volume of business that a stock yards company does depends its profits, does it not?
A. Yes; and its expenses.
Q. Of course you are seeking for business all the time?
A. Yes, sir.
Q. So the more business you do the more profits you make?
A. No; I can't say that. The more business we do the more money we take in, but the profit may not be any greater, the net profits.
Q. But if you doubled your business, you would double your earnings?
A. Yes, sir.
Q. And therefore there would be more money coming into the coffers of the company *coffers of the company?*
955 A. Yes, sir.
A. Yes, sir.
Q. I don't mean that the profits on one steer would be greater, though I presume you keep a force of men there all the time which

would be able to handle a larger volume of business than you now have.

A. Yes, sir.

Q. And therefore the actual profit on one steer might be greater?

A. No; the stock yards company aims to have men enough to take care of the maximum amount of business. If it runs below that maximum, the profit is less; if it runs over, the profit is more. Usually it breaks about even.

Q. Now, the St. Joseph yards has a minimum of business as compared with Kansas City Stock Yards Company, but it charges the same rates that the Kansas City Stock Yards Company does?

A. Yes, sir.

Q. In other words, the Kansas City Stock Yards Company, doing a hundred times the volume of business, charges as much as the St. Joe yards charge for a very small business?

A. Yes, sir.

Q. How are your yards located geographically, as compared with the Kansas City stock yards? As favorably or otherwise?

A. We have not as large a territory to draw from as Kansas City yards have. They have the West, the South, the Southwest, and the Northwest. Our business is drawn particularly from the West and the Northwest. They have the greatest scope of country to draw from.

Q. Then they are more favorably located than you are?

A. Yes, sir.

Q. And naturally will get more business than you will?

A. They do more business than we do.

Q. If the business ability of both companies is equal, if the management is equal, they would naturally get more business than you would, wouldn't they?

A. Yes, sir.

Q. So if all this thrift and all these packing-houses and all these advantages that are built up around the Kansas City stock yards by reason of the energy and skill and management, if the same conditions existed exactly the same at Omaha—notwithstanding all that, the Kansas City stock yards would still do more business?

A. We think so.

Q. There is very sharp competition here in the West between the stock yards companies, is there, between Omaha and Kansas City?

A. Well, St. Joe is out for business and St. Louis and East St. Louis.

956 Q. St. Louis does not seem to have done much business in 20 years. I guess they are not in it.

A. They are not making much of an effort in that direction. East St. Louis, Illinois, is making very rapid strides.

Q. Do you think they are good business men in St. Louis?

A. I think Mr. Palmer is a good stock yards man. I think he put forth as much energy as possible.

Q. Why hasn't he built up a business down there in 20 years?

A. You will have to ask him.

Q. St. Joe is not much of a market?
A. No, sir.
Q. There is no such a city there as at Kansas City?
A. No, sir.
Q. Well, that is one of the things that makes a market, is it not?
A. If St. Joseph were the larger city, it would help the market.
Q. That is to say, this large city is a benefit to the Kansas City market?
A. Yes, sir.
Q. That is another element that goes to help Kansas City outside of these elements that are provided by nature?
A. Yes, sir.
Q. Have you an exchange building?
A. Yes, sir.
Q. Have you one as large as the one here?
A. No, sir.
Q. How many commissionmen have you?
A. We have about 40.
Q. Do you own the building?
Q. Yes, sir.
Q. Do you rent it?
A. Yes, sir.
Q. What are the commission charges on your market?
A. 25 cents for yarding cattle, ten cents for calves——
Q. I mean the charges of commissionmen for selling.
A. They are fifty cents.
Q. You say the nearness of packing-houses to the stock yards is a benefit because there is less shrinkage in driving the cattle from the pens to the packing-houses?
A. Yes, sir.
Q. That benefit accrues to the packer, does it not?
A. Not entirely. He shares it with the shipper. I may explain that if the packer has a long drive and must figure on shrink- he will pay less; whereas, if he is close at hand, he may say, I have this short drive, and I will pay more.
Q. You think he would make that fine calculation?
A. Yes, sir.
957 Q. He is a close buyer?
A. Yes, sir.
Q. He is not deceived by appearances, is he, Mr. Babcock?
A. A man is liable to be deceived, but they are very careful and cautious men.
Q. You say these western markets are great markets for slaughtering of cattle, etc. Where is the greatest stock market in the world?
A. Chicago.
Q. Why is that so?
A. It has been established many more years than any other market; it is centrally located and has more railroad facilities than any other market.
Q. Where is the greatest feeder market?

A. Kansas City.

Q. After those feeders are ripened for the market where do they go?

A. If they go east of here to feed, they are liable to go to St. Louis or Chicago or return to this market.

Q. What makes Kansas City the greatest feeder market in the country?

A. Its location in the corn district.

Q. Its geographical location?

A. Yes, sir; and the amount of cattle that it receives.

Q. You say that the location of the yards, the ability to do business, the knowledge by the shippers of this market, business ability, and competition are elements that go to make up what is known as this intangible something we call good will?

A. Yes, sir.

Q. Are there any other elements that go to make up this good will?

A. I do not call to mind any other elements.

Q. You place the value of this good will at something like two and a half million dollars?

A. Possibly.

Q. How much of the good will do you attribute to the location?

A. I could not divide it up; it is the contribution of all these many elements that makes one great whole.

Q. How do you get at that value? Can you demonstrate to me that this good will is worth two million and a half of dollars? Just take a piece of paper and demonstrate it to me that that is what it is worth.

A. Suppose that the value of this property at one time was one dollar. Now, I take it, when this enterprise was started there *some* some fear and trembling; no doubt that has entered into all speculations and investments. Now, if after the investment of
958 one dollar it is ascertained that they have discovered a good location geographically and by the energy and push that is necessary to build up a business they have succeeded in building up a business that has become profitable, I consider that the man is entitled to remuneration for the discovery and for the energy he has put into the work; he is entitled to remuneration for his sagacity.

Q. We will say this business cost one dollar and in ten years, by this thrift and energy you spoke of and business sagacity, that plant that cost him but a dollar has developed in value so that it is paying dividends on a valuation of a million dollars; now, of course, this good will that you speak of is something different and distinct from this million-dollar valuation?

A. No, sir; permit me. I used the illustration of one dollar more particularly to illustrate the value of the stock that may have been in this company.

Q. What stock?

A. That is the investment, dollar for dollar; it might have been a dollar or it might have been a million dollars. I say that if this

company having been once organized and the value of the stock was a dollar and it goes along through a series of years, possibly with a good deal of uncertainty as to its future, and by this business sagacity it is built up to a point where it becomes a dividend-paying property, I say that the people who established this business are entitled to consideration for the business that they have built up.

Q. All right; I think so.

A. And that consideration would be based upon the earning power of the property; that would be the basis of it.

Q. Now, we will say that this property is owned by an individual and not by a corporation, and that you go down there and you buy 160 acres of land, for which you pay ten thousand dollars, and after ten years of business thrift and energy that plant is worth ten million dollars; it is earning dividends on an investment that would equal ten millions of dollars; stock has been issued as the land increased in value up to ten million dollars—that is, the value of the land that has been increased by reason of the increased business and the conditions surrounding this property—and the individual is earning dividends far in excess of his original investment. Now, over and above the value of that land, his business thrift and
959 energy have all gone into that land; that is the thing that has created this value; that is the thing which has made the dividend-earning power on ten millions, whereas only ten thousand were put in. What is the value of the good will over and above that thing?

Question objected to and withdrawn.

Q. We will say that the cost to the Kansas City Stock Yards Company was originally three million dollars in money to put their plant where it is now, and during these years the business energy of the managers have built up conditions around the plant which have made it worth seven million dollars, so that the original investment of three millions is today drawing dividends upon seven millions of stock. Now, is there any good will over and above the value of that plant at seven millions of dollars?

A. I think the difference between the three millions and the *the* seven millions, if caused by the advance in the property and by the location, it is a legitimate advance on the property and is entitled to that consideration, I then believe—I believe they have paid for the property for the seven million dollars—I then believe, if the business of the Kansas City Stock Yards Company today, based upon seven million dollars, its geographical location, and its future prospects, it is entitled to another consideration.

Q. How much is that other consideration?

A. Whatever the earning power of the property may be.

Q. You have said it is two and a half million dollars.

A. Whatever it may be.

Q. Then you do not attempt to state the value of it?

A. Yes, sir.

Q. What is it?

A. I would say, if there was the value of the stock—if seven million

dollars was the actual value of the property—that a premium of 33⅓ % for the purchase of the property by a syndicate would be a fair valuation of the property.

Q. Where does your location and ability to do business and knowledge by the shippers come in?

A. That has all been expended up to this time. Here is a complete plant that I shall turn over to you for so much money.

Q. I thought you said those things constituted the good will?

A. That is what has constituted the yards and made this business and the future prospects for it. That is the good will.

960 Q. I would like to have you explain to me how you get at the two millions and a half for good will; upon what basis do you figure it?

A. Upon the basis of the business energy put into the property to bring it to this point. The Kansas City Stock Yards people have established this business, and, as I say, there is no doubt but what they went into it with fear and trembling and at a good deal of risk, like every other man. They stood the same chance of loss of their three million dollars as they did to make four millions on the money invested, and after they have taken this risk and after they have established this business and have built upon a dividend-earning power on the investment of the seven million dollars——

Q. But they have only invested three million dollars.

A. But you say they have got seven million.

Q. They only have three million actual cash.

A. That is their statement.

Q. Whose statement?

A. That they have got seven millions, as you gave it to me.

Q. I say if they have spent three million and the property is now worth seven million.

A. That is the physical property. I say that these men who have persisted in this work and built the business up to what it is are entitled to the results of their energy—to the good will of the business over and above what they have put into the value.

Q. You do not give much consideration to the increase of the value of the property.

A. I think the location and the good will equal to the property.

Q. Would the fact that the packing-houses have been brought in here, that it has cost money to bring them here, and that it has cost money to send men out on the road to drum up business for the yards—would those be elements that would enter into the good will?

A. It would enter into and make the market, which is good will.

Q. Would they be elements?

A. Yes, sir.

Q. Money that would be expended in that way would be?

A. Would tend to the establishment of the market.

Q. And to that extent would determine the value of the good will?

A. Would determine the value of the property.

961 A. *Would determine the value of the property.*

Q. You say the value of the stock is a good criterion to show what the value of the good will and property is?

A. Yes, sir.

Q. The value of stock on the market is determined by the earning power of the stock, is it not?

A. Very largely; yes, sir; and the security back of it.

Q. And the earning capacity of the stock depends upon the amount of business and the charges that are made by the company, does it not?

A. Yes, sir.

By the MASTER: You heard the testimony of Mr. Palmer, did you?

A. Yes.

Q. Can you state what the live, going business of the St. Louis Stock Yards Company is worth?

A. I cannot, only from his statement.

Q. I mean from his statement.

A. I should judge there was no profit in it at all.

Q. So the business would not be worth anything?

A. No, sir.

By Mr. HITE:

Q. You have reference to the intangible property?

A. Yes, sir.

Q. It is not worth anything?

A. No, sir.

Q. Please state whether or not the cost price of the good will—what it has cost is, in your judgment, the ultimate value?

A. I don't think so.

Q. You were asked about the market value of the stock measuring the good will. Will you please state to the master what relation the market price of the stock has to the selling price of the property which the stock represents?

A. The market price of the stock and the selling price of the stock would, of course, be the same.

Q. I think you misunderstand the question. What relation has the market price of the stock to the selling price of the property which the stock represents—that is to say, suppose there is outstanding stock to the extent of a million of dollars at a premium of thirty dollars a share, that would — $1,360,000? What relation would that $1,360,000 of stock bear to the value of the property belonging to the corporation which had issued the stock—a

962 going concern, treated as an entirety—would it represent that value or not?

A. It would represent that value.

Q. In your experience, has it ever occurred that stock yards companies have expended money to bring packing-houses to their vicinity, and to make railroad connections, to send out advertising agents and solicitors, and to spend lots of money without creating his good will?

A. Yes, sir; the intangible property; I think so.

Q. That is, where they have been unsuccessful in building up a market so that the money has been really lost?

A. Yes, sir.

Q. In such a case as that, would it — fair, in estimating the value of their plant, to add to it the money they had expended to get a good will they had never got?

A. I don't think so.

Q. The service which is rendered in the Kansas City stock yards or the Omaha stock yards—is the value of that service to the shipper any different whether 100 car-loads come in or whether 5,000 car-loads come into the yards?

A. He gets the same service.

Witness excused.

Adjourned until Thursday, June 17th, 1897.

963 J. W. FERGUSON, a witness produced by the complainants, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to direct interrogatories propounded to him by D. R. Hite, Esq., counsel for the complainants, testified as follows, to wit:

Q. Do you reside in Kansas City, Mr. Ferguson?

A. In Kansas City, Kansas.

Q. Do you know where the Kansas City Stock Yards property is located?

A. Yes, sir.

Q. Do you own property in the vicinity of the stock-yards property?

A. Yes, sir.

Q. How long have you owned that property?

A. 12 or 13 years.

Q. Are you acquainted with the land owned by the stock yards company?

A. Yes, sir.

Q. How long have you been acquainted with it?

A. Well, I became a resident of Kansas fourteen years ago; I have been fairly conversant with all these things ever since.

Q. Have you had frequent opportunities of seeing the property?

A. Yes; I have lived within a stone's throw of a large portion of it for five or six years.

Q. Are you acquainted with any actual real-estate transactions in that vicinity in recent years in which real estate has been bought and sold?

A. Yes, sir.

Q. Are you acquainted with the value of real estate in the vicinity of the stock yards?

A. Yes, sir.

Q. I call your attention to the tract marked E on the map; it is the north yards of the company. State in which direction and the

location of the land that you own with reference to the north yards of the stock yards company.

A. It is right on the west side of that block.

Q. On James street?

A. Yes, sir; it is on the west side of James street, on the east side of the block.

Q. It is east of the Maple Leaf terminals, is it not?

964 A. Yes, sir; it is right in the same half block; the Maple Leaf terminals are right in one half of the block.

Q. About how many feet is it from the northeast corner of the yards?

A. My property is right up in here; it is perhaps two or three hundred feet.

Q. Are you acquainted with the value of the property shown by the letter E on the map, being the north yards of the Kansas City Stock Yards Company?

A. Yes, sir.

Q. Please state to the master what that property is worth at this time, per acre.

A. That is, taking it as a tract?

Q. Leaving out that portion of the property lying west of Water street.

A. I believe that property is worth anywhere from $30,000 to $35,000 an acre.

Q. What elements do you consider in arriving at the value of property?

A. Take what we call the west bottoms over there, that is bounded by the Kaw river and the Missouri river, and what people over here call the west bluff; take the land on which the Union depot is built and the land around the Armour and Fowler packing-houses, I take that as the center of the heavy business that *that* is going to be done by this city. When I say by this city I mean Kansas City on both sides of the line; I take that as the center of business, and that territory is limited and confined. There is only so much land available; the packing-houses take off a chunk for packing-houses; the railroad companies take off a chunk for the railroad yards and terminals; the stock yards has a large block, and it is my judgment that eventually that entire property will be taken for railroad yards, packing-houses, stock yards, implement factories, warehouses, and other manufacturing institutions; I do not place much stress on the last, but I do on the first three.

Q. Those are the elements that enter into your idea of the value of this property?

A. Yes, sir.

Q. Since you have owned property in this vicinity has it been your experience that any of the elements you speak of have

965 entered actively into the values of the real estate down there?

A. Yes, sir; from time to time, first one thing and then another.

Q. I will call your attention to another piece of property that is owned by the Kansas City Stock Yards Company, located west of

Genesee street and east of the State line, and ask you to State to the master if you know the value of that property.

A. Yes, sir.

Q. State what, in your opinion, that property is worth per acre at the present time.

A. It is worth from forty to fifty thousand dollars an acre.

Q. Do the same elements that you have spoken of enter into the price of that land?

A. Yes, sir.

966 And in answer to cross-interrogatories propounded to him by L. C. Boyl-, attorney general, the witness testified as follows, to wit:

Q. Where do you own property, Mr. Ferguson?

A. I own 48 feet right here — to the Chicago & Great Western line.

Q. It is between your property and the stock-yards property?

A. Yes.

Q. Now, as I understand you, the only reason why you place the value that you do on that property there is because in time you expect it to be used by the stock yards company?

A. Yes, sir; the stock yards or railroads or something of that kind, but I haven't much idea there that that property will ever be used for stock-yards purposes.

Q. Why?

A. The Chicago & Great Western yard is all between it and the Union Pacific and Missouri Pacific down here.

Q. Where are there any packing-houses there?

A. I don't think the packing-houses will use that ground. I think the future of that is that the railroads will use that ground.

Q. You are holding that property with the view that some time the railroad company may need it?

A. With the view that the railroad company will need it and have it.

Q. How do you know?

A. Judging the future by the past; they came in there and took half of it, and they haven't yards to amount to anything now, and any railroad which comes into this city must get a terminus over there in the bottoms or they can't do business.

Q. You are simply hoping that that condition may develop?

A. No; not hoping. I believe that it is developing all the time; that is the condition.

Q. You want it to be that way?

A. It is not a question whether I want it or not. I say that is my judgment. That is my belief.

Q. I say you want it?

A. I am very willing it shall be.

Q. Of course, if it don't come about that way, your property won't have that value?

A. No; if the stock yards were taken away and all the railroads followed, none of our property down there would have any value.

Q. Well, take these stock yards away from there and set them off somewhere else where you cannot see them, and there would
967 be 40 or 50 or 30 acres of land that could be used for any purpose that people might want to use them for, do you think that your property would then be as valuable as it is now, with this amount of land available for that purpose? Can you get your mind around to grasp that idea that the stock yards are not there?

A. I will give you another supposition.

Q. Answer my question. Just take the stock yards away from there, so that people can go in there and buy that property for stock-yards purposes or manufacturing purposes, or for any other purpose, the entire 30 or 40 acres, do you think then that your few lots would have the value you claim for them?

A. It might be a temporary backset, but that property would again be used for that purpose; it is destiny.

Q. You judge of this property here of the company to be of a certain value because of the value that you put on property around about it?

A. What that property around about it has sold for.

Q. That is to say, there are certain lots that these railroad companies or the stock yards company in the development of their business have to take in in order to meet the demands of their business?

A. That is what gives value to property.

Q. That is what gives value to property?

A. Yes, sir.

Q. That you sold to them?

A. Yes, sir.

Q. Do you put that value on all this property that they formerly owned? Do you attach the same value that they paid for this lot that they got for the same purpose to all their property?

A. What do you mean?

Q. You have a lot down there; how many lots have you?

A. Two.

Q. What is the size of them?

A. 24 by 120.

Q. What do you value them at?

A. $200 a front foot.

Q. And the reason that you put that value upon them is simply because you expect the railroad company will want them?

A. I sold——

Q. I am asking you the question——

A. I am going to tell you. The reason I place that value upon those lots is because I sold two lots in the same block for two hundred dollars a foot, no better lots. There is a demand for property there, and it is valuable; it will all be used eventually for
968 some of the purposes I have enumerated, not necessarily for railroad purposes.

Q. What other purposes, then?

A. Every foot of land that the stock yards company absorbs and uses makes the rest more valuable.

Q. Don't you expect that property some time to be necessary for railroads or the stock yards or some such enterprise?

A. Or some enterprise, yes; I will grant that.

Q. What is it today that gives that property its greatest prospective value?

A. Kansas City; the business, the multiplied and varied interests of Kansas City.

Q. Not the stock yards; not the railroad companies?

A. The stock yards is one element; the railroads are one element; the packing-houses are one element; the business of Kansas City is one element; the wholesale trade is one element; all of these things combined.

Q. And the territory which is tributary to Kansas City is another element?

A. Certainly.

Q. That is a large element, is it not?

A. No question.

Q. Now, do I understand you to say that the value of this stock-yards property, the thirty acres in these north yards, is worth the same price per acre that you value your lots down there by the foot?

A. No, sir; I didn't place that valuation on it.

Q. What valuation did you place upon it?

A. $30,000 to $35,000; I placed mine at $70,000.

Q. What difference do you make between your lots and the land of the stock yards company?

A. Well, some of the land of the stock yards company is low there.

Q. Where?

A. Take it down along in here; the water backs up on the other side of the track.

By Mr. HITE: He asks you about this high land, the north *years*, where the water does not back up.

By Mr. BOYLE: That is what I am asking you about.

A. I say the western edge of that ground, all along there, the water does back up.

Q. How much is that worth an acre?

A. That would not be worth as much.

Q. How much would you say it is worth?

A. It would take very little to fill that strip along the rail-
969 road; that would be worth $15,000 or $20,000 an acre.

Q. For what purposes could they use it?

A. They could fill it up and use it for stock-yards purposes, the same as the other.

Q. Can the stock yards company afford to buy lands at fifteen or twenty thousand dollars an acre?

A. I should think so.

Q. What makes you think so?

A. I should say——

Q. Don't the earning capacity of property determine its value?

A. Not always; not the immediate earning capacity.

Q. It is the earning capacity, directly or indirectly, that determines its value; isn't that true, Mr. Ferguson?

A. I think, perhaps, that is true, directly or indirectly, as you put it.

Q. No man buys property merely from whim, unless it is a pleasure resort or something of that kind; but when he buys property for business purposes he buys it because he believes the property will return to him a given per cent. on the investment?

A. There is no doubt about it.

Q. Now, you are testifying to the value of this property as business property. Suppose that the legislature of Kansas should reduce the rates which the stock yards company is charging, so that they would not be as large and the profits would not be as large as they are now; I will ask you to state whether this property, this acreage we are speaking of, would be as valuable then as it was before.

A. Legislation which would impair their ability to earn money would affect them the same as it would any other business.

Q. Would it affect the value of that property?

A. Certainly it would; the distilleries all over Kansas were knocked out by the prohibition law.

Q. So that the earning capacity of this property determines its value?

A. Undoubtedly.

Q. Therefore the larger the income derived from the property the greater becomes the value of the land upon which the business is located; isn't that true? The larger the profits the greater the value of the land; that is true, is it not, naturally?

A. I would place the value of the rest of the land on their ability to get more of the same kind; I would say—if they have a lot
970 of land, I would say that is worth a certain price per acre; if they go all around it and buy lots for less, then their price shrinks.

Q. Then you attach the same value to this 30 acres that they would have to pay for some lot or two or three lots that they would have to have for the natural development of their business; you would attach the same price to all their property that they had that they had to pay for that special property?

A. No; I put theirs at thirty, and I hold mine at seventy thousand dollars an acre.

Q. What is your property worth $125 per front foot for?

A. It is worth that for stock yards purposes.

Q. How do you know?

A. Because they have been buying property at that price right in that locality.

Q. That is the only way you know?

A. Yes, sir; a man don't generally pay more than a thing is worth to him.

Q. That is to say, they had a good deal of property that they bought at less prices than now?

A. That is the way with all of us who invested in Kansas City fifteen or twenty years ago.

Q. Here, we will say, is a piece of property that they paid one hundred or two hundred or a thousand dollars an acre for, upon which they developed a great business.

A. Yes, sir.

Q. Now, in time, in the natural development of that business, it becomes necessary, in order to get an outlet for their business, for the purpose of building a house or a bridge, or some natural and reasonable purpose, it becomes necessary for them to buy some lots. The men who own those lots know that the stock yards company, in the natural order of things, are obliged to get that property, and they charge the company at the rate of forty thousand dollars an acre for them. Do I understand you to say that that is a fair way to estimate the value of the 25 acres that they owned previously to that?

A. If their business has increased so that they cannot get along without more ground and they have to increase it, it is a fair proposition that the ground that they have originally is worth what they have to pay for the other.

Q. You do not catch my question. They have to have a small strip of ground as an outlet, we will say.

971 *Q.* There isn't any question of an outlet in this case, though. When they buy acre by acre and block by block for stock-yards purposes, I don't think it is a question of outlet.

Q. They paid more for this 22 acres here in Missouri than they paid for the balance of their entire plant all put together.

Q. And the addition of the 22 acres increased the value of the entire plant.

Q. Do you put the same value on this property over here that you do to that?

A. Certainly; this property over here is of just as much use to them as this property here; they are using it for the same purpose.

Q. Therefore you say this property is just as valuable for general market purposes as that?

A. I certainly do. I can't see any difference in it.

Q. We will take a corner lot down there and say it costs five hundred dollars a foot; understand me?

A. Yes.

Q. An inside lot only costs two hundred dollars a foot. Why is that corner lot worth five hundred and the inside lot only two hundred dollars a foot?

A. Well, the corner lot is supposed to be more advantageously located.

Q. For what?

A. For any purpose.

Q. It would not be more advantageously located for stock-yards purposes?

A. Yes; when they come to vacate a street they will get half of the street on each side.

Q. And that will make that lot that much more valuable?

A. Yes, sir.

Q. Do you know where Bell street is?

A. I know pretty closely. I don't know the streets one after another, but I know them in a general way.

Q. And the reason you say the corner lot would be worth more to the stock yards company is because they would get more of the street privileges?

A. They would get almost double. You take a lot that runs lengthwise along a street, and when the street is vacated they will get double the amount of space for cattle pens.

Q. Take an inside lot for which they pay three hundred dollars *and* foot, and the next lot they pay two hundred dollars a
972 foot for; now, what is the difference for stock-yards purposes between those two lots?

A. There is no special difference, but the stock yards company will buy property for what they can get it, just like other people.

Q. Now, does the location of a lot have anything to do with the value that the stock yards company put upon it?

A. Practically, none; they take them and average them.

Q. But the seller, he puts a value on it because of the location and for *for* business purposes?

A. Very likely.

Q. Take a piece of land 2 % by 120 and put that piece of land right here in the center of the stock-yards property here; do you mean that that piece of property would be worth $200 or $250 per front foot for other and general purposes, surrounded as it would be by the stock yards?

A. That wouldn't be a fair proposition; of course that would kill the lot to put it in and surround it by the stock yards.

Q. And yet you are selling these lots one at a time all over these bottoms and putting these prices on them?

A. Of course they can only pick up a few lots at a time, and they buy them as cheap as they can.

Q. People hold them up as much as they can?

A. That is a business proposition the world over.

Q. Now, coming back to the other proposition which I asked you about a few moments ago. Here is a piece of property that costs them a thousand dollars an acre, and it becomes necessary for them to extend their yards out and embrace some adjoining lots for any purpose on earth that you may say, and to get it they have to pay two hundred and fifty dollars a front foot for those lots. Now, do I understand you to say that that is the criterion by which you value all the other property that they have formerly owned?

A. If it — worth $250 a foot to make cattle pens, why not?

Q. Now, we will take away these cattle pens; we will take them away——

A. They wouldn't buy any more because they wouldn't need it.

Q. That is true, but we will suppose that somebody was going to

locate a stock yards or a wholesale house, or anything else in here, and there was two or three hundred acres of land vacant down there?

A. You are going to start a new town, are you?

973 Q. No; I am not going to start a new town at all; I am just taking the conditions which exist there except that the stock yards are gone. You are giving the value of this raw land.

A. Yes; that is right.

Q. You are taking away the stock yards; there is no superstructure on the land, and you are going to fix a value on the land for business purposes, not because there is any business on it, but because it is available for business purposes, because it is in the middle of Kansas City. Take away these yards——

A. Take away Kansas City?

Q. No; I simply say here is a lot of raw land down there, two hundred acres of it. You say that land is valuable because the railroads want it, because the packing-houses want it, and because other kinds of industries want it; that is not only valuable for stock-yards purposes at seventy thousand dollars an acre, but it is valuable for these other purposes, is it not?

A. All these things go into it to make that value.

Q. Then take the stock yards away and we will leave these other things there.

A. Take away the live-stock industry, is that the idea?

A. No; I am not going to take away the live-stock industry; I am going to take away these yards, and then if anybody wants to come in there and locate yards or buy property for railroad terminals they can do so. Now, do you say that property would be worth in a body, as naked land, fifty or sixty thousand dollars an acre?

A. I appeal to the court that that is not a fair question.

Q. If you can answer it, do so.

A. I can answer it, but the point is here. I say these things are all a growth; the stock yards is a growth, the manufacturing is a growth, the railroad industry is a growth; it has taken 25 years to make them. Now, you propose to wipe out all the advancement of 25 years and start back 25 years.

Q. No; I don't propose to do that; I don't think that yours is the correct way to estimate the value of all this property; I don't think it correct to say that because a railroad which must have a switch in order to make the rest of its property useful has to pay an artificial and fancy price for the necessary land upon which to build that switch, that that price fixes the value of all the

974 rest of the property of the railroad company.

A. I haven't heard the question yet.

Q. I say I understand you to make the proposition that if a railroad company or a stock yards company located, as they are down there, by reason of the extension of their business or for any other reason, are required to buy a certain tract of land that the extraordinary price they are obliged from their necessities to pay for that land fixes the value of all the rest of their land.

A. I would not say it would bring it down to that; I did not make that statement.

Q. What would be the difference?

A. Well, there would be some difference.

Q. What would make the difference?

A. Whatever fictitious value that you spoke of that they would have to pay would make the difference.

Q. You haven't any fictit-ous value on your lots down there?

A. No, sir; two hundred dollars a foot is not a fictitious value at all.

Q. How long have you owned them?

A. Ten or twelve years.

Q. What is on them now?

A. Two little houses.

Q. What rent do you get for them?

A. Ten dollars a month.

Q. Why don't you sell them?

A. Because I can't now. I could have sold them 7 years ago for $175 a foot.

Q. That was during the boom days?

A. No, sir; the boom was gone glimmering.

Q. You could have sold them for how much?

A. $175 a foot; I was offered that and I thought they were worth $250. I had just sold two lots for two hundred in the same block, which were not as well located as these are.

Q. There does not seem to be any great demand for property down there at those prices these days?

A. There is no great demand for property anywhere.

Q. Things are at a standstill in a business way?

A. Prosperity has not arrived yet.

Q. Upon that proposition we can agree. How soon do you expect that your property will be purchased at this price, Mr. Ferguson?

A. I haven't the slightest idea, Mr. Boyle. I am going to
975 hold on, unless the sheriff gets it, until I get it.

Q. There is no general demand for your property at that price right now, is there?

A. There is no demand for property anywhere.

Q. There is no demand for your property at that price, is there?

A. Well, just now I don't know of a purchaser who wants to buy it.

Q. We are talking about the value of your property now; we are not talking about five years from now or ten years from now. There is no demand for your property at all at that price?

A. I say, though, that there are conditions at work for years that convince my judgment that that property is worth that money.

Q. Convince your judgment; your judgment might be defective.

A. Yes, sir.

Q. We are trying to get at what things are worth now.

A. It is a very hard problem.

Q. You say that one way of ddtermining the value of the prop-

erty of the stock yards company is by knowing what they paid for adjacent property?

A. What they had to pay to get it.

Q. They paid a thousand dollars a foot for some of this property on Genesee street. Does that make the rest of their property worth that much?

A. There is considerable of the fictitious value that you spoke about in that. Somebody has taken advantage of the stock company's necessities.

Q. Nobody has asked you to take advantage of them?

A. No, sir.

Q. You are waiting?

A. I have my price.

Q. Do you think that this property down here is worth as much as this property over here?

A. I do not see why it should not be; I can't see why it ought not to be worth more.

Q. For stock-yards purposes?

A. Yes, sir.

Q. They would have to have tunnels or viaducts or bridges to get from these tracts?

A. They do that, you know.

Q. That is considerable expense and trouble, is it not?

A. Oh, it costs a few hundred dollars.

Q. It costs very little to run that plant?

976 A. It costs very little to build bridges to transfer stock.

Q. The stock yards company owns 142 acres of land about two and a half miles west from this plant; suppose they just take the plant and move it up there, what effect would that have upon the property in the bottoms where their plant is now located? Just say there are no improvements on this land. What would the land then be worth per acre for any purpose on earth that you wanted to use it for—for railroad purposes, packing-house purposes, stock-yards purposes, or anything else? What would that land be worth per acre. There is eighty acres in a body which has no improvements on it; what would it be worth for railroad purposes, for packing-house purposes, stock-yards purposes, or any other purpose?

A. That question would imply that there are no stock yards in existence in this town.

Q. Don't imply anything about it. If you don't know, say so.

A. I don't think any man can know.

Q. Can you answer my question? If you can, do so; if you can't, say so.

Q. Well, it would be worth very nearly as much, because if the *the* stock yards were gone, but the conditions were otherwise the same, it would be a very short time until other stock yards would be established here; there would be more stock yards built here, because Armour, Swift, Schwarzschild & Sulzberger and the other packers must have stock to slaughter.

Q. What is your business?

A. I am a tramp at present. I am hunting for a job.

Q. What was your business last?

A. I have been treasurer of Kansas City, Kansas, for the last six years.

Q. What railroads would fill up this space in there?

A. I don't think any of them would. I think a stock yards would fill it up.

Q. What packing-houses would fill it up; what wholesale houses would fill it up?

A. I made the statement that I thought there would be another stock yards come in because the packing-houses would draw.

Q. In other words, you just simply conclude that that would be so?

A. I think so.

Q. You do not fix any general market value on this prop-
977 erty for any purpose than stock-yards purposes, do you, sir?

A. Yes, sir.

Q. What are they?

A. I say for railroad purposes.

Q. Well, get at that now. What railroads could use this 82 acres for railroad purposes?

A. There is half a dozen railroads clamoring for entrance into Kansas City.

Q. They would use all this 82 acres?

A. They would use a part of it.

Q. How do you know?

A. It is the center of business; it is where the railroads like to go.

Q. They would take up this land?

A. I don't think I said that. I said I thought another stock yards company would take it up.

Q. You base your proposition upon the fact that this land is most valuable for stock-yards purposes?

A. Just at the present time it is, because it is used for that purpose.

Q. Could it be used for any other purposes?

A. No doubt it could.

Q. For what other purposes would there be a demand for that amount of land?

A. I would like to finish up another question. The packing-house industries, the stock industry, and the stock-yards business are so intertwined that where the stock yards are the packing-houses have to go. I think it is a physical impossibility to move the stock yards away from here and leave these packing-houses here; these packing-houses are bound to bring stock here, and the moving of the stock yards would involve the moving of the packing-houses; the two propositions have to go together.

Q. I say, then, the special value put upon this property is for stock-yards purposes?

A. At present.

Q. What other enterprises are there that would occupy and use up this land at the values you have placed upon it?

A. I have said this: that all of these multiplied causes I have given tend to produce and build up and make Kansas City, and to make values here, and they are all interwoven and interlocked together. I can't see the possibility of separating them. I don't believe myself—of course, I am not a lawyer, but I don't believe it is a fair question to talk about taking one of the industries out which is so closely related to the others.

978 Q. You put this value on this property because of the stock yards?

A. Because of all these industries.

Q. I am asking you what other industries could buy and use this land?

A. We wouldn't have any Kansas City without the stock yards.

Q. Kansas City would fail?

A. No; it would not fail, but it wouldn't be what it is; it is one of the big elements in our prosperity.

Q. You say you put this value upon this property because it could be utilized for other purposes?

A. I told you I thought it would be worth about as much.

Q. For what other purposes would it be worth as much as for stock-yard purposes?

A. Would you exclude any other stock yards from occupying the ground?

Q. I think my question is clear enough. You say it could be used for railroad purposes. Now, would it be as valuable for railroad purposes?

A. Without the stock-yards industries there wouldn't be any necessity for so many railroads.

Q. Would it be that valuable for packing-house purposes or wholesale purposes?

A. Not for packing-house purposes, because there are certainly as many packing-houses around there as the stock yards can supply now.

Q. Then you do place the greatest valuation upon the land because the stock yards are upon it?

A. And the packing-houses.

Q. Those two things are what fix the value?

A. Not wholly. I told you there were three or four things which fixed my valuation.

Q. What other things could they be used for except stock-yards purposes at the value you place upon it?

A. The proposition is, what would the play of Hamlet be with Hamlet left out?

Q. Do you understand the question?

A. Yes, sir.

Q. Limit your answer to that. What is that land worth for any other purposes than stock-yards purposes? Do you understand the question?

A. Yes; but I don't think it is a fair question.

Q. Can you answer it?

A. The question is, what would it be worth with no stock yards around at all; take the stock yards away.

Q. That is not the question I asked you. What would that
979 property be worth for other purposes?

A. It is worth just as much for railroad purposes as it is for stock-yards purposes.

Q. Then, if I understand you correctly, in your judgment this land here would be utilized for railroad purposes?

A. Eventually; yes.

Q. How do you know?

A. Judging the future by the past.

Q. This eighty acres of land would be covered with railroad tracks?

A. The railroads want to get in there.

Q. Do you say that all this tract of land is worth the prices you have put upon that down there?

A. No; I don't say so.

Q. What is it worth?

A. I put $-0,000 or $60,000 on B.

Q. What do you put on this?

A. I wouldn't put so much. I would put a price of $5,000 less on that.

Q. Why?

A. I think there is $5,000 fictitious value in that, because people thought they had to have it.

Q. So the real value of that wouod be fifty thousand dollars an acre?

A. That would be my judgment.

Q. You have reference to the tract marked B?

A. Yes, sir.

Q. That is, it would be worth that for packing-house purposes, for railroad purposes, or anything of that kind?

A. Yes; I think that is the general market value.

Q. Don't you know a portion of this land is piled in here along the river bank?

A. That is filled land; I know it.

Q. You think they could build packing-houses along there?

A. No question about it; they could drive piles and put a packing-house in the Kaw river.

Q. That would be very expensive, would it not?

A. They have gone to lots of expense to make that riprapping. It is the same way with Chicago; a good deal of the city is built on piles.

By Mr. HITE:

Q. I want to be clear about the prices that you put on this tract by Genesee street. What do I understand were your figures in that neighborhood?

A. Fifty-five or sixty thousand dollars.

980 Q. That is the tract, marked A, lying between Genesee street and the State line?

A. Yes, sir.

Q. Now, what do you value the tract marked B at?
A. I think five thousand dollars less.
Q. Do you say $50,000 an acre?
Q. Yes, sir.

By Mr. BOYLE:

Q. The testimony is that the company paid $88,000 an acre for 11 acres of that land down there. Now, do I understand that that would be a fair valuation of the rest of this land?
A. That is not what I said. I said there was a hold-up in that.
Q. Where do you draw the line as a hold-up?
A. Between the fair market price and the thousand dollars a foot that was spoken of.
Q. There wasn't any market value for that land down there. Nobody on earth was paying that price for it.
A. There seemed to be a market value for it.
Q. Nothing except the stock yards company. They had to have it and these people held them up. You have got no market for the sale of your little lots down there.
A. I am fool enough to think they are worth it.

Witness excused.

981 J. W. TOURTELLOT, a witness produced by the complainants, being first duly sworn to testify the whole truth and nothing but the truth, in answer to direct interrogatories propounded to him by D. R. Hite, Esq., counsel for the complainants, testified as follows, to wit:

Q. Where do you reside, Mr. Tourtellot?
A. Kansas City, Missouri.
Q. Where is your place of business?
A. In the packing-house in the bottoms.
Q. What packing-house?
A. Armour's packing-house.
Q. How long have you resided in Kansas City, Missouri?
A. Since 1872.
Q. Are you acquainted with the lands in the west bottoms?
A. Yes.
Q. How long have you been acquainted with the lands in the west bottoms?
A. Ever since I have been here.
Q. About 25 years?
A. Yes, sir.
Q. Are you acquainted with the lands in the bottoms in the vicinity of the stock yards?
A. Yes, sir.
Q. Have you been acquainted with those lands down there as long as you have stared?
A. Yes, sir.
Q. Do you own any property adjacent to or in the vicinity of the stock yards?

A. Yes, sir.

Q. Have you had any occasion to observe any purchases or sales of real estate in the vicinity of the stock yards in recent years?

A. Yes.

Q. Have you sold any property in the vicinity of the stock yards in recent years?

A. Yes, sir.

Q. Have you purchased any property in the vicinity of the stock yards in recent years?

A. Do you mean the last two or three years?

Q. No; I mean 6 or 7 or 8 years.

A. Yes, sir.

Q. Are you acquainted with the values of property in the vicinity of the stock yards?

A. Yes, sir.

Q. I call your attention to the property marked E on this map, and ask you to state in what direction from that you have bought or sold any real estate or know of any purchases or sales of real estate within the time I have mentioned.

982 A. Yes; the southeast corner of 8th and James.

Q. Do you know of the purchase or sale of any other property in that vicinity, Mr. Tourtellot?

A. Yes, sir; this property on the corner of Pacific avenue and James street.

Q. Are you acquainted generally with the values of lands in this vicinity between Pacific avenue and Central avenue?

A. Yes, sir.

Q. State to the special master what, in your opinion, the property marked on this map as E is worth at the present time per front foot or per acre.

Objection as not qualified.

Q. Are you acquainted with the value of the property that is designated on the map as E?

A. Yes, sir.

Q. Please state to the court what in your opinion that property is worth at the present time by the front foot or by acre.

A. I think it is worth from $25 to $150 per front foot.

Q. Please state to the master what elements go to make up your judgment as to the values of lands in that vicinity.

A. Well, it is the use that the property is desired for; that is the principal thing that makes that property valuable, such as for stock yards, railroads, the large warehouses, and packing-houses.

Q. State whether or not there is any tendency on the part of large enterprises to seek locations in that neighborhood.

A. I think there is.

Q. I now call your attention to the property marked on this map by the letter A, being a portion of the main yards of the Kansas City Stock Yards Company lying east of the State line and west of Genesee street, and will ask you if you know the value of that property at this time.

A. No; I don't know the value of that property as well as I do on the other side.

Q. Are you able, from your knowledge of the value of property in that vicinity, to form and express a judgment as to the value of this property?

A. Yes, sir.

Q. Please state what in your best judgment is the present value of this property at the present time.

A. I think it is worth from $200 to $250 per front foot.

983 Q. When you speak of property being worth a certain price per front foot, please state to the court what you mean by that.

A. I mean that the value of the property is that.

Q. You did not catch the idea. Does that mean a foot facing upon some particular street?

A. Yes, sir.

Q. And how far should it run in order to make it of the proper dimensions to be calculated by front feet?

A. About 125 feet, I should judge.

Q. About how many front feet, as you term them, are there in an acre?

A. About 250, I believe.

Q. Is that the usual and customary number of front feet to be estimated to the acre?

A. Yes, sir

984 And in answer to cross-interrogatories propounded to him by L. C. Boyle, attorney general, the witness testified as follows, to wit:

Q. You value this land at $250 a front foot?

A. Yes, sir.

Q. $200 to $250?

A. Yes, sir.

Q. It would depend on the lay of the *lat* as to the increased value?

A. Yes, sir.

Q. Of course, a corner lot would be more valuable than a lot in the middle of the block?

A. Yes, sir.

Q. And you make your estimate of the value of this property on the theory that these lots, some of them, have superior positions to others for business purposes?

A. Well, I would put the corners at $250 and the inside lots at $200 a foot.

Q. Now, suppose there were not any corners or inside lots about it, and there were no lots about it, and there weren't any front feet to be considered, how would you value that?

Mr. Hite objects to the question as an impossible hypothetical question.

Q. How are you going to arrive at the value of these stock yards

where there are no inside lots or corner lots? It is just like a farm that you have to value by the acre.

A. I value it by the acre.

Q. What do you value this at by the acre?

A. Sixty or seventy thousand dollars an acre.

Q. Then the fact that a lot is on a corner and is worth $250 a front foot does not cut any figure in your estimate as to the value of this property, does it?

A. No; it don't seem to.

Q. When you spoke first, you said that the location of a lot determined its value, and you put the price at $200 to $250, and the larger price was because of the superior location of the corner lots; now, you say it don't make any difference whether there is any corner lot about it.

A. For certain purposes, no.

Q. Then for stock-yards purposes you value this land at this price?

A. Yes; or railroad purposes.

Q. You value this at sixty or seventy thousand dollars an acre for stock-yards purposes?

A. Yes, sir.

985 Q. You don't know anything about stock yards?

A. I don't.

Q. Do you?

A. I do.

Q. This is very valuable land for stock-yards purposes?

A. Yes, sir.

Q. Now, of course, if those stock yards down there were not in a profitable location for stock yards purposes this would not be very valuable land for the purpose, would it?

A. No, sir; I don't think it would.

Q. It is in a very good location for stock-yards purposes because it is near to the country where stock is ranged, is it not?

A. Yes, sir.

Q. That is one of the things that goes to make up its value?

A. Yes, sir; and being near the packing-houses.

Q. That is another thing that comes into it?

A. Yes, sir.

Q. But of course the thing that brought all these institutions here was the fact that the cattle were out here in the West where they could be gotten at?

A. Yes, sir.

Q. That is the primary consideration which established the yards here?

A. Yes, sir.

Q. So that, if this company can afford to own $60,000-an-acre land, it must be because the business is very profitable?

Mr. Hite objects to the question as immaterial. Objection sustained.

Q. Well, the stock yards company could not afford to own land

of that character and value unless its profits were very large, could it?

Same objection and ruling.

Q. As a business man, engaged in the packing business, you say that you are familiar with the character of the plants and institutions that are located in these bottoms; have you any notion that these institutions could afford to buy such valuable property unless their business was very profitable?

Same objection and ruling.

Q. How long have you been down there, Mr. Tourtellot?
A. I have been connected with the packing-house since 1871.
Q. What packing-house is that?
A. Armour's.
Q. Was the packing-house there before the stock yards came or after?
A. I think it is very close. I think the stock yards were here when the packing-house came.
986 Q. Are you interested in the Armour Packing Company's plant?
A. No, sir.
Q. What are your duties?
A. Superintendent.
Q. Do you own any stock?
A. No, sir.
Q. Are you familiar with their business arrangements, as to the amount of stock they own in the stock yards company?

Objection as not proper cross-examination and immaterial. Objection sustained.

Q. You are superintendent of that institution down there?
A. Yes, sir.
Q. How much land do they occupy?
A. About 30 acres.
Q. How much did they get from the stock yards company?
A. I don't think they got any from the stock yards company.
Q. You don't think they got any?
A. No; they came before the stock yards company was able to give any, I guess.
Q. Was Armour's the first packing-house here?
A. No, sir.
Q. Who was before Armour?
A. Slavens and Mansur, I think.
Q. Are they still in business?
A. No; they are not in business.
Q. How long did they continue in business?
A. About ten years. Then there was T. J. Bigger & Company.
Q. When did they start in business?
A. They were here before the Armours came, and Nofsinger was here.

Q. None of those are here now?
A. No, sir; they have sold out. The Dold Packing Company got the Nofsinger place, and Fowler's is the old plant of T. J. Bigger & Company.
Q. Is the Kingan plant still in operation?
A. No, sir.
Q. How long has that been closed down?
A. About two years, I believe.
Q. Yours is the largest plant of those located here?
A. Yes, sir.
Q. You have some 30 acres?
A. Yes, sir.
Q. What is the capacity of your plant; is it twice as large, a third larger, or what?
A. Twice as large.
Q. As any other plant?
A. Yes, sir.

And in answer to redirect interrogatories propounded to
987 him by Mr. Hite, counsel for the complainants, the witness testified as follows, to wit:

Q. I call your attention to your statement in reference to the property that is known as the north yards over there, marked E on the map. I will ask you to state to the special master what is the value of that property at the present time, per acre, in your judgment.
A. About $30,00–.
By Mr. Boyle: With reference to the small tracts marked *e*, that are immediately north and west of these north yards, what are they worth?
A. They are worth $125 to $150 a front foot.
Q. You put the value a little high[illegible]an this property in here?
A. I don't see much difference.
Q. Calling your attention to the small tract north of the north yards, consisting of 1.421 acres, what do you think that is worth per front foot?
A. I think that is worth two hundred dollars.
By Mr. Hite: In regard to this tract marked A, I will ask you to examine the tract up here that is marked B up here and state to the special master what, if any, difference there —, in your judgment, between the value of the two tracts.

Mr. Boyle objects to the question for the reason that the witness is not qualified to answer.

Q. From such information as you have with reference to property in that vicinity, are you able to form and express a judgment as to the relative value of this property and that which I designated by the letter B; have you a judgment on the subject?
A. I think I have; yes, sir.
Q. Have you a sufficient judgment to be able to express an opinion as to the value of this tract of land?

A. Yes, sir.

Q. Are you acquainted with the value of the land in the tract marked B there?

A. Yes, sir.

Q. Please state what, in your judgment, that land is worth per acre.

A. I think that is about the same price as the other.

Q. You put that at from sixty to seventy thousand dollars per acre?

A. Yes, sir.

Q. When you say the other you mean the tract marked A?

A. Yes, sir.

988 Questions by Judge MARTIN:

Q. When you place that large value on the Kansas land marked B, for what purposes do you consider it wor-h such a large price?

A. For stock-yards purposes or railroad purposes.

Q. For those two purposes you think it would be worth that much?

A. Ought to for large warehouses.

Q. For railroad purposes, in such a large tract as that, it would practically have to be covered with railroad tracks in order to be worth that, wouldn't it?

A. I don't think it would be necessary to be covered.

Q. Pretty much so, wouldn't it?

A. I should judge so.

Q. For large wholesale houses or warehouses, or the like of that, it would have to be pretty nearly covered with such property to be worth that, wouldn't it?

A. Well, I don't think it would be necessary to be entirely covered; no, sir.

Q. You think if a great deal of it were vacant and no prospect of its use for those purposes it would still be worth that much?

A. I think a good deal of it would be vacant, of course, and the prospect would be for it to be used for that purpose.

By Mr. HITE:

Q. You said you thought this property would be worth that for railroad purposes; I call your attention to the piece of land lying north of B, designated on this map as terminals of the Union Pacific and Missouri Pacific Railway Companies. What in your opinion, if you know, is the value of that land at the present time for railroad purposes?

Objected to and withdrawn.

Q. Do you know the value of the property I have designated in the previous question? If so, please state to the special master what its present actual value is. Do you know the value of that land, Mr. Tourtellot?

A. I think I do.

Q. Please state what it is worth at the present time.

A. I think it is worth about $60,000 or $70,000 an acre; the same as the other.

Witness excused.

989 J. B. WELSH, a witness produced by the complainants, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to direct interrogatories propounded to him by D. R. Hite, Esq., counsel for the complainants, testified as follows, to wit:

Q. Where do you reside?
A. 1429 Wyandotte, Kansas City, Missouri.
Q. What is your business?
A. Real estate.
Q. Where is your office?
A. 716 Delaware.
Q. Are you in business with any other person?
A. Yes, sir; the firm is Crutcher & Welsh.
Q. How long have you been transacting a real-estate business?
A. Something over ten years.
Q. During that time have you made any considerable number of purchases and sales of real estate?
A. Yes, sir; sold a good deal of real estate in the town.
Q. Have you any idea of the approximate amount of such purchases and sales in the last few years, Mr. Welsh? Can you describe some prominent ones that you have made?
A. I made one last week for $45,000 cash and one of $75,000.
Q. Give us some idea of the extent of your transactions in real estate.
A. We made last year a great many sales. We keep a record, and in four months we made 60 sales. Out of that number there were two or three quite large sales, one of $70,000 and one or two *or* $12,00– or $15,000.
Q. Have you ever had any connection with any duties as an appraiser growing out of your business as a real-estate agent?
A. Yes, sir; I was appointed by the Federal court as an appraiser; one of the appraisers of the Maston estate of two millions dollars.
Q. Do you mean that you were appointed by the circuit court of the United States for this district?
A. Yes; the Federal court, by Judge Phillips.
Q. You performed your duties as such appraiser in that case, did you?
A. Yes, sir.

990 Q. Are you acquainted with the values of real estate in and about Kansas City, Kansas, and Kansas City, Missouri?
A. I think so; yes, sir.

Q. Please state to the special master what has been, approximately, the extent of your experience in real-estate transactions in Kansas.
A. Well, we have sold a considerable amount of property over in

Armourdale. We placed several factories over there. We have sold a good deal of real estate there and have quite a large list of property there for sale on both sides of the river. We have an agent who resides in Kansas City, Kansas. We have our main office here, but we sell on both sides of the river.

Q. How many employés has your firm in and about the transaction of your real-estate business?

A. We have ten.

Q. How far is Armourdale from the Kansas City stock yards?

A. Armourdale really joins the Kansas City stock yards; runs right up to them.

Q. Where is the location of 13th street and Hickory street with reference to the stock yards?

A. The stock yards commence at 12th street. About two or three blocks.

Q. That would be within 1,000 feet, would it not?

A. Yes, sir.

Q. Have you ever had any transactions in real estate in and about the vicinity of 13th and Hickory streets?

A. We were figuring with a large wholesale house to locate them in the bottoms. I will answer by saying that we have had transactions in the west bottoms.

Q. Mention some of them.

A. I sold a piece of land on the corner of 16th and Bell in 1895 for $32,000 in cash, 70 feet of ground. As I started to state, we had a large implement-house that wanted to locate in the bottoms. We were looking for a location for it. They selected one of three pieces. We corresponded with the owners and got them here in Kansas City and made an offer of 120 feet of ground at $300 per foot. They were going to put up a three-story building and lease it for a term of years. They refused that and wanted $400 a foot. They refused absolutely the three hundred dollars a foot for the ground. That was last year.

991 Q. I understood you to say, Mr. Welsh, that this piece of land about which you are now testifying is within about 1,000 feet of the stock yards?

A. Yes, sir; I should judge it would be.

Q. What direction is that?

A. East.

Q. Have you in your hands at the present time, Mr. Welsh, as real-estate men, any property for sale in the vicinity of the stock yards?

A. Yes, sir; we have a number of pieces.

Q. Will you state to the special master, from any data or memorandum which you may have on the subject, what pieces of property you have and their location with reference to the stock yards?

A. I cannot give the property from memory, but I have a list here.

Q. You may use that if you will.

A. We have 1409 and 1411 Genesee street.

Q. Where would that be on this map?

A. It is between 14th and 16th streets; about 100 feet south of 16th street.

Q. What is that property held by your real-estate firm at?

Objected to as incompetent, irrelevant, and immaterial. Objection sustained.

Q. What, in your opinion, is the value of that property you have just described?

A. We have nothing cheaper than $250 per front foot, and it runs from that up to $300 and $350 and $400 a foot.

Q. What other property have you in that vicinity?

A. We have a property back on Wyoming; we have a property up here on 12th street.

Q. What do you value the property on Wyoming at?

A. We have at $150 and $200 a foot.

Q. Do you say you have some on 12th street?

A. Yes, sir.

Q. At what do you value that property?

A. $500 a foot.

Q. Now, when you speak of property at $250 a front foot, with that as a basis, Mr. Welsh, what would be the value per acre? How many lots are there to an acre?

A. In estimating that we estimate a 25-foot front and from 120 to 124 or 125 feet deep, ten lots to the acre.

Q. I call your attention to the map, to the tract of 42 acres owned by the stock yards company, lying east of the State line and west of Genesee street. I will ask you if you know the value of that land; if you have formed a judgment upon it from your knowledge
992 of real estate in that vicinity.

A. Yes, sir; from what we have sold there, from the prices that it was sold for, and the prices we know others have sold for.

Q. What, in your opinion, is the 42 acres worth per acre or per foot or in any other way you choose to estimate it?

A. In my judgment this property here lying near the exchange building is worth at least $200 to $250 a foot.

Q. How much per acre?

A. $60,000 an acre.

Q. Now, Mr. Welsh, I call your attention to a tract lying west of the State line and comprising 40.35 acres, and ask you to state what, in your judgment, that property is worth per acre.

A. I think that is worth less. I would put that at $40,000 an acre.

Q. I call your attention to the north yards of the company, marked E on the map and comprising about 25 acres, leaving out the property which lies down on the river bank. What would you consider to be the actual value of that property at the present time?

A. I base my valuation—of course, it is used for very much the same purpose as the other, but it is further away from the exchange building and the center of business, so I would put that at $30,000 an acre.

Q. I call your attention to a little piece here cut by James street, containing an acre and a fraction. What, in your judgment, is that worth per acre?

A. That is a small piece. I think it is worth $160 a foot down there, or $40,000 an acre. We have some down there.

Q. Now, I call your attention to the tract marked C, comprising about 15 acres west of the Kansas river and part of the quarantine yards. What, in your opinion, is the present actual value of that property?

A. About $15,000 an acre.

Q. Now, I call your attention to the tract marked D—7.125 acres—west of the Kansas river. Please state to the master what, in your judgment, that property is worth at the present time.

A. That is not so good. I would put that at $5,000 an acre.

Q. I call your attention to a little piece of 8.6 acres lying down here west of the north yards, near the Missouri Pacific tracks, on the east bank of the Kansas river, and will ask you to state what, in your judgment, that land is worth per acre at the present time.

993 A. That is a little lower than this, but if it is filled up equal to this it is worth just as much as the other ground, $15,000 an acre.

Q. I believe you stated that, in your judgment, the 25 acres in there was worth $30,000 an acre?

A. Yes, sir.

Q. And you think if this was filled up to grade it would be worth as much as the other?

A. Yes, sir.

Q. I will ask you how long it has been since you made an examination of any of the lands down there in the bottoms. Do you see them frequently?

A. Yes, sir; I am down there very frequently.

Q. State what, in your judgment, brings about the values of lands there in the bottoms.

A. Well, I think the railroad terminals, in connection with the other classes of business down there. We have a number of packing-houses there and other industries—a foundry, a box factory, car-wheel factory, stove works, and many other industries—some of which we have helped to locate there *there*. That land is worth the prices put on it for manufacturing purposes and for railroads, too. I sold some land in there in the last two or three years to railroad companies, to the Belt line and the Second Street belt line.

Q. In your consideration of the bottoms down there is there any tendency, so far as you have observed, of any other industries than those you have mentioned seeking locations there?

Objected to as immaterial. Objection sustained.

Q. For what, if any, other industries than those you have named are those bottoms adapted?

Objected to as incompetent, irrelevant, and immaterial. Objection sustained.

994 And in answer to cross-interrogatories propounded to him by L. C. Boyle, attorney general, the witness testified as follows, to wit:

Q. Calling your attention, Mr. Welsh, to Bell street, to the hotel; do you know what the stock yards paid for that?

A. For the hotel?

Q. Yes.

A. I think they paid about one thousand dollars a foot for that place.

Q. And for the rest of it they paid less?

A. Yes, sir.

Q. Now, what made the difference in the price?

A. That corner, for instance, was a saloon and hotel, and more valuable on that account; it is immediately in front of the Exchange building and more people pass it daily and stop there; all these things make that corner especially valuable; there were two or three corners that were more valuable on that account.

Q. It was not more valuable for the purposes for which it is being used?

A. Yes; they used it themselves afterwards for the same purpose.

Q. It would be more valuable as a hotel than as stock yards?

A. They are getting a big revenue out of it; they are renting it now with the hotel on it.

Q. They get six thousand dollars a year as rent from that hotel?

A. I did not know that.

Q. That was one of the things that — land there so valuable, was on account of the business location that the stock yards company bought out?

A. Well, the men who owned it thought it made it valuable; they had to pay something for that to get the land; in order to buy the land it was necessary to buy the business; in order to vacate the alley and get that land they had to have it, and the man could simply make them pay, and they paid because conditions made it valuable to them; you say they are getting six thousand dollars a year for it; it is not a bad investment; they did not pay more than it was worth.

Q. Right across the street south from that hotel are two saloons?

A. Yes, sir.

Q. Do you know what they paid for that next corner?

A. No; I don't. I sold them a corner up this way for $460 a foot.

995 Q. Where was that?

A. At the corner of 15th and Bell street.

Q. These are very valuable locations for saloons where they are now located?

A. There was no saloon on this corner I am speaking of.

Q. I mean on Bell street where I am speaking of?

A. Yes, sir.

Q. So that when the stock yards company was buying that prop-

erty, it bought not only the land, but it bought a man's business out, didn't it?

A. When he left he sold everything he had; yes, sir.

Q. He sold out not only his property, his land, but, as these gentlemen say, his good will, and all the rest of it?

A. He sold all he had—his right, title, and all he had.

Q. If that property brought six hundred a front foot, the naked land, the value would be less, wouldn't it, than what they paid?

A. They didn't pay that for a great deal; therefore the naked land was worth less. At that rate it would have cost them $250,000 an acre.

Q. I don't know what they paid. I am simply using that as an illustration that they paid something for the business institutions that they bought out?

A. They undoubtedly did.

Q. Are you identified in any way with the Kaw Valley Townsite & Bridge Company?

A. I act as agent to sell their land.

Q. Who is president of the company?

Mr. Hite objects to the question as immaterial. Objection sustained.

Q. What was that property that you sold that you referred to a moment ago that you got four hundred dollars a foot for?

A. It was a small brick house and a little frame barber shop on the rear of the lot.

Q. Who owned that property?

A. A Mrs. Sage.

Q. You bought it, did you?

A. No, sir; I sold it.

Q. You sold it to the stock yards?

A. No; I sold it to a party out of the city.

Q. To whom?

A. I sold it to a Mr. Cameron, of Salt Lake City.

Q. When?

A. It was in 1895; I have forgotten just the date.

Q. He transferred it to the stock yards company?

A. That was none of my business.

Q. I say, did he?

A. I don't know whether he did or whether he sold it to somebody else and they did; I didn't follow up the transaction;
996 I sold it to Mr. Cameron, of Salt Lake.

Q. You say that this property is worth per acre what you estimated it as valued per foot?

A. Yes, sir.

Q. How do you know it is worth that much per acre?

A. I know what land has been sold for and land that we have for sale down on different streets.

Q. That is, in small tracts?

A. If a man wants them he has got to pay the price.

Q. Have you got any acre tracts?

A. No; but when you come to buy you have got to pay that.

Q. Where have you got any tracts per acre down there that you want to sell?

A. I am not selling per acre; I put this at so much per foot and you can multiply.

Q. I do not think that is the proper way to get at the value of this property, because the fact that you have one lot or two or three little lots that you hold at a certain price, I do not think that is a fair way to get at the value of this 150 acres of land that they have got over there.

A. Will you allow me to ask a question?

Q. Yes.

—. Bullene, Moore, Emery & Company occupy half a block of land at the corners of 11th street, Walnut street, and Grand avenue; I was in the dry-goods business once myself. Now, every part of that ground is worth just as much as any other part. The room occupied by the elevator is worth as much as any other similar amount of space, because they have got to take people up and down, and I argue that if they use all this land for the same purpose there is no difference, to my mind. For instance, you go into a big concern which occupies a whole block and you will say, This place is worth just as much as any other for the purposes for which it is being used; so with a railroad. You can't pick out fifty feet and say it is worth so much, and another and say it is worth so much. Each piece is just as necessary for that railroad as any other piece; so it is with the stock yards.

Q. I think this land over here is just as valuable for the stock yards for their purposes as this.

A. I make a difference here because it is nearer to the center, nearer to the commissionmen, and all that; that makes
997 quite a difference.

Q. Forty or fifty per cent. because it is a little further away from the center of the stock yards?

A. Yes, sir.

Q. You have estimated these values along the line of the value that it is for stock-yards purposes?

A. Yes, sir.

Q. You sell land over at Armourdale?

A. Yes, sir.

Q. What does land sell for there?

A. We have got some lots that we can sell for fifteen hundred dollars a lot and some at twelve hundred dollars a lot on Kansas avenue.

Q. You have an eight-acre tract over there that you spoke of selling?

A. I said we located a factory; didn't make the sale. We gave that virtually to a concern to locate over there that worked two or three hundred men; they guaranteed they would work a certain number of men.

Q. That is, the land company which you represent gave that much land for a location?

A. The people who owned the land did that; yes, sir.
Q. How much land did they take?
A. About eight acres.
Q. How far from the stock yards?
A. It is a short distance; it is out at 13th street near the box factory, between the car and box factory.
Q. It is near the car factory?
A. About a mile.
Q. Is it a mile?
A. Yes; I guess it is a mile.
Q. That is on high land, is it?
A. It is on that low land in Armourdale.
Q. You dedicated that land?
A. Partially; not entirely.
Q. What did you get for it?
A. We gave a donation and got $6,000; but those people are putting that ground in at thirty thousand dollars and borrowing money on their capital, borrowing money on the basis of thirty thousand dollars.
Q. I asked you what you got for the land.
A. It is hard to say; I say we gave a donation; you may put it in as you like. We got six thousand dollars and we gave them the larger portion of that for locating there and guaranteeing to work four hundred men.
Q. I ask you what did you get for the land in money.
998 A. I say six thousand dollars; that was not the money consideration at all.
Q. That is all you know?
A. I know the other was more the consideration than the cash.
Q. You hoped to increase the value of other property?
A. Certainly.
Q. About how much would that be an acre?
A. About $750 an acre.
Q. Do you know where this other tract of land is that the stock yards company owns near Argentine, that is not in the stock yards company's name, near the southern bridge?
A. You are trying to mix me up with the stock yards company. I am not representing the stock yards company.
Q. I am not trying to connect you with the company. Do you know this tract of land that the company owns? It is not in their name, but is located near the southern bridge.
A. I don't know it in that way. What is located on it?
Q. I don't know what is located on it, but I know the stock yards company owns it and I am simply trying to get at the value of that piece of land. I will get the location of it. It is at least two miles from the stock yards.

Adjourned until 9.30 a. m., Wednesday, May 19th, 1897.

Morning session.

WEDNESDAY, *May 19th*, 1897.

Hearing resumed.
All parties present as before.

Mr. WELSH on the stand.

Cross-examination resumed by Mr. BOYLE:

Q. Last evening I called your attention to a tract of land lying about three miles from the stock yards, near Argentine, Kansas. You now are familiar with that land?

A. Yes; I know where it lies.

Q. Do you know when it was purchased by the stock yards company?

A. No, sir; I don't.

Q. What is the value of that land?

A. We have land up there near that that we are offering for $2,500 to $3,000, for manufacturing purposes, per acre.

Q. Do you consider that the value of that land per acre?

A. Yes, sir; I think it is worth that.

999 Q. Do you know where the horse and mule barns of the Kansas City Stock Yards Company are located; on what street?

A. On Bell street.

Q. Are you familiar with the land on which those barns and buildings are located?

A. Yes, sir.

Q. What street is that hotel on?

A. 16th and Bell.

Q. Now, that *that* is on the northeast corner of 16th and Bell?

A. Yes, sir.

Q. Now, take the southeast corner of 16th and Bell. Are you familiar with the lot there on the corner? I refer to the southeast corner of 16th and Bell, in Missouri. I will ask you to give me your judgment as to the value of that lot per front foot where that saloon stands.

By Mr. DANA: You mean as a specific lot?

By Mr. BOYLE: I don't care how he values it.

A. I value it, of course, from the rentals it brings in.

Q. What do you think it is worth?

A. I understand it is bringing in a big rent; I understand $250 a month. I would have to value it according to that. Property is worth what it brings in. On that basis it is worth certainly as much as the lot up here that I sold. Figuring it today, I should think it was worth four or five hundred dollars a foot.

Q. Now, take the lot next to it. What is it worth?

A. That is worth less. That is an inside lot. The corner lots are worth a great deal more.

Q. The next lot south, where a saloon is located?

A. This lot adjoining the saloon ought to be worth 33 % less than the corner.

Q. How much would that be per front foot?
A. About three hundred dollars.
Q. Those are 25-foot lots?
By Mr. DANA: You mean as originally platted?
By Mr. BOYLE: Yes, sir.
A. Yes, sir.
Q. Now, going south still further, what would you say the next lot was worth? That is where there is a drovers' journal, I believe. What is their property worth per front foot?
A. I think that is worth the same as the next one to it.
Q. Now, the next is the Drovers' Telegram building, where a certain printing office is located?
A. Yes, sir.
1000 Q. What do you think that is worth?
A. I should grade that down to $250.
Q. There are two lots intervening between the Drovers' Journal and the barns. What do you think those vacant lots are worth per front foot?
A. From $200 to $250.
Q. We come now to the barn. From the barn down to 17th street, commencing at the northwest corner of the stock-yards stables as they exist on Bell street, going south to 17th street, what do you think that is worth per front foot?
A. It is worth $200 to $225.
Q. That is raw land?
A. Yes, sir.
Q. Independent of the stables?
A. Yes, sir.
Q. Going along Bell street or what was formerly called Bell street south across 17th street, I will ask you to tell me what, in your judgment, the value is per front foot of that property upon which is located the barns of the Kansas City Stock Yards Company and which are located on the east side of what was formerly Bell street, in Kansas City, Missouri. What is that property worth per front foot as far south as the barns reach, which is almost to 19th street?
A. I should think from $200 to $225 per front foot.
Q. I call your attention to a part of the exhibit which shows the property owned by the stock yards company and which is located near the north yards, marked with 7 e's. I will ask you to state what, in your judgment, those lots are worth per front foot. Now, I refer to property which is outside of the stock yards company's plant and near Central avenue and immediately north of what is known as the north yards. Those lots are not now used by the stock yards company, but are owned by the stock yards company. What are those lots worth per front foot?
A. You mean taking them all, taking the whole frontage, or do you mean any individual lot on Central avenue?
Q. You may divide them as you see fit—those seven tracts.
A. I would put them at $100 a foot.
Q. You would put those at $100 a front foot?
A. Yes, sir.

Q. Now, I will call your attention to a lot or tract of ground which is northeast of the north yards, there being one and a fraction acres.

1001 Q. That is on James street?

Q. Yes, sir. What, in your judgment, is that worth per foot?

A. About one hundred and sixty dollars.

—. I now refer to the eight acres, which is part of the north yards, marked E.

A. I put a price on this property that I did not intend to at all; I had another piece in mind. I did not intend to make that price; I meant to say if it was filled up it would be worth fifteen thousand dollars an acre.

By Mr. DANA: You mean the tract of land on the east side of the Kaw river and west of what is known as the north yards—8.6 acres?

A. Yes; I think I have got it down in writing. I think he has got it down about twice as much as it ought to be.

Q. What do you say it is worth now?

A. I say when filled $15,000.

Q. I am asking you what it is worth now unfilled.

A. I should think it was worth ten thousand dollars an acre.

Q. That is land that they did not even assess for taxation, and you think it is worth ten thousand dollars an acre?

Mr. Hite objects to the question as incompetent, irrelevant, and immaterial. Objection sustained.

Q. The stock yards company owns a piece of land right at the southeast corner of 12th and Genesee which is not now being used for stock-yards purposes. What is that worth per front foot; do you know how that ground is cut off?

A. No; I don't know how that particular lot is cut.

Q. What is that property worth per front foot—that corner?

By Mr. DANA: You mean full-sized lots?

By Mr. BOYLE: What is that corner property worth per front foot?

A. As it shows on the map?

Q. Yes.

A. I could answer that in a way. We have a good deal of ground down there on that street for sale; we have nothing under two hundred and from that on up to five hundred dollars a foot.

Q. You put this at $200 to $500?

A. $200 or $250.

Q. Do you put it at $200 or $250?

A. Well, I should say it is between $200 and $250 per front foot, basing it on values elsewhere.

Mr. Dana asks to have the fact noted that the evidence
1002 does not show that the stock yards company owns the lots in question.

By Mr. BOYLE: I think it will be necessary for the company to

show how much land it bought down there. The fact is that part of this land which it claims to own it never bought.

By Mr. DANA: But you have already admitted that the company owns the land shown on Exhibit C.

By Mr. BOYLE: I have not admitted anything of the kind. If I did it is an admission that I should never have made, and if I desire to withdraw it, of course, I have the right to do so.

By Mr. HITE: We don't think so. We have proceeded all along, since the first day when the map was admitted in evidence, that you admitted the company's holdings were as shown on the map.

By Mr. LITTLE: The fact is, when you offered the map in evidence I objected to it because it was not properly identified, and there was no proof that it was correct, and it was admitted subject to our right to examine it and make any objections we saw proper.

By Mr. BOYLE: We certainly reserved the right to make an examination and find out whether the map is correct, and we may want to have a survey made of the yards in order to find out just what the company has down there.

By Mr. DANA: We have an entirely different understanding about this map; but if General Boyle is going back on his admission the sooner we get this question settled the better. We are perfectly willing that the master shall appoint some disinterested engineer—say Tuttle & Pike. General Boyle has already had them do some work for him, and he ought to be satisfied with them—to make a survey of the stock yards and find out exactly how much land the company has.

Thereupon the parties agreed the master should make an order empowering Tuttle & Pike to survey the yards and make a map thereof, and an order was accordingly made. Said order is returned with this testimony and as a part thereof.

Q. Do you know whether the stock yards company owns any property further north and in the vicinity of the stock yards?

A. I don't know that they do own anything further there.

1003 Q. You don't know how much property the stock yards company owns?

A. No.

Q. Have you bought any property or sold any property on Genesee street, Mr. Welch?

A. Within what time; last year?

Q. Well, when the stock yards company made that purchase down there, did you buy any property or sell any property to the stock yards company?

A. I sold one piece, but I sold it to a party away from here; I don't know what he did with it; I sold it to Mr. Cameron, of Salt Lake City.

Q. Do you know whether he is identified with the stock yards company or not?

A. No; I don't.

Q. You don't know that he is a stockholder?

A. No, sir.

Q. That property that you sold to Mr. Cameron is now owned by the stock yards company?

A. I guess so; yes, sir; it is on Bell street.

Q. What is the character of the business that is located along the east side of Genesee street?

A. The business houses now, I think, are mostly of brick.

Q. What is the character of the business that is being run in there?

A. Saloons, hotels, saddlery-house, and harness store.

Q. Who owns that property; is there not a Genesee Townsite or Land Company down there?

A. I don't know just the name of it; we have most of the property on that street for sale; I can give the names of every individual who owns property down there.

Q. I would like to know if there is a corporation that owns any property down there.

A. I think there is.

Q. What is the name of it?

A. The Genesee Street Building Company.

Q. You say you have their property listed?

A. No; I haven't prices on that property; I have prices on some adjoining it.

Q. I say have you prices of the Genesee Land Company listed?

A. Yes; I have got some of it; Mr. Allen gave it to me; asked me if I had the property, and — I did not to list it.

Q. Who is the president of that company?

A. I don't know the president of it at all; I haven't sold any of it, and therefore have not looked the matter up; it has not been necessary.

Q. *The* you represent the Kaw Valley Townsite & Bridge Company?

A. We acts as agents to sell their property.

1004 Q. Is not Colonel Morse identified with both of those institutions?

Objection as wholly immaterial. Objection sustained.

By Mr. HITE:

Q. You spoke about having some property on Genesee street for sale at this time?

A. Yes, sir.

Q. Do you know of any actual sales that have taken place on Genesee street within recent times?

A. Yes, sir; I know of two sales that took place on Genesee street at three hundred dollars a foot, and buildings were erected, I think, now.

Q. Was the property sold in the vicinity of the stock yards?

A. Yes; south of 16th street; both pieces were south of 16th street, on the east side of Genesee.

Q. That would be between 16th and 19th?

A. 16th and 17th.

Q. In estimating the value of property by the acre when it is sold or offered for sale by the lot, how many lots as estimated as comprising an acre?

A. Ten lots, 25 foot front by 125 to 130 feet deep.

Q. That does not include any of the streets?

A. No; it does not include them.

Q. An acre would be comprised within 250 feet front by 128 feet deep?

A. Yes, sir.

Q. That is, to say nothing about the streets at all?

A. No, sir.

Q. Now, in estimating acre property by the means you have suggested, that would allow outside of the 250 feet sufficient for streets, would it, so that the sale of acre property in lots, say, 250 feet front by 128 feet deep, would allow streets around all the sides of the block, would it, and there would be no calculation with reference to those streets at all, would there?

A. No.

By Mr. BOYLE:

Q. You value these small tracts marked *e* which adjoin the property of the stock yards on the north at $100 to $125 a front foot?

A. Yes.

Q. At what price do you value this property marked E, being the north yards, by the foot?

A. That would be about the same per foot—about $125 a foot.

1005 Q. You would value this the same?

A. Yes, sir.

Q. You value this a little higher—the acre and a fraction on James street?

A. Yes, sir.

Witness excused.

1006 J. B. WELSH recalled for further cross-examination by Mr. Boyle:

Q. I neglected to ask you what that hotel property on Bell street is worth, in your judgment—the hotel that you say is located in a valuable place for the purpose.

A. I testified as to the corner, and I should give the same valuation again—$500 per front foot.

Q. You put that valuation on it because of its location?

A. Yes, sir.

Q. Now, you stated, as I understand you, that the earning capacity of property is one of the tests by which you arrive at the value of property—for instance, if you were going to buy a property you would try to ascertain, I presume, what it brought in in rents, what the taxes and insurance were, and in that way you would arrive at the value of the business location?

A. Certainly, they have got a great deal to do with it, with the question of value.

Q. Then, the prices which the company pays to certain parties from whom it rents land would be one way of arriving at the value of that land?

A. The property that the stock yards company bought?

Q. No; that it rents from other parties—the rent that it pays would be one of the ways of arriving at the value of the property they rent?

Question objected to and withdrawn.

Witness excused.

1007 W. J. DALTON, a witness produced by the complainants, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to direct interrogatories propounded to him by D. R. Hite, Esq., counsel for the complainants, testified as follows, to wit:

Q. Where do you live, Father Dalton?

A. 1406 Wyoming street?

Q. What is your profession?

A. Clergyman of the Catholic church.

Q. Where is your church located?

A. At 14th and Wyoming streets.

Q. How long have you lived in that vicinity?

A. Twenty-five years the 29th day of next month.

Q. Are you acquainted with the value of property in that vicinity?

A. I believe I am; I feel that I am.

Q. Do you know the value of any part of the property of the Kansas City Stock Yards Company?

A. Well, I know the sales that were made to the stock yards company since it bought first eastward from the State line as far as Bell street, and then from Bell to Genesee and from 12th up to 16th. I know the prices that were paid by the stock yards company in at least two of those purchases; my memory may not serve me in regard to the first purchase, but I have an idea that I remember what was paid for the first; at least for a portion of it.

Q. From the information that you possess, are you able to form a judgment as to the value of the stock-yards property?

A. Well, I would be able to tell the value by the foot front. I haven't any way of *guaging* values by acres; I am not used to that term.

Q. I will ask you to look upon this map, Exhibit C, and observe the property that lies east of the State line. There is a tract of land comprising 42 acres, belonging to the stock yards company, lying east of the State line and west of Genesee street and between 12th street on the north and 19th street on the south; will you tell the special master what, in your judgment, that property is worth at the present time per front foot?

Question objected to and not answered.

Q. Do you remember when those purchases were made,
1008 Father Dalton—the last purchase that you spoke of?

A. About three years ago.

Q. In your judgment, is that property as valuable now as it was at the time those purchases were made?

A. I think it is.

Q. What, in your judgment, Father Dalton, is the value of the property of the stock yards company which was purchased last, east of Bell street and facing Genesee street, at the present time per front foot?

A. From $225 to $250 per front foot.

Q. Now, Father Dalton, do you remember of a purchase made by the stock yards company previous to that, east of the State line and facing Bell street?

A. I remember the purchase; yes, sir.

Q. In your opinion, is that property as valuable now as it was at the time the purchase was made?

A. I think it is; yes, sir.

Q. What, in your opinion, is the present actual value of the property of the stock yards company east of the State line and facing on Bell street?

A. I should put it at the same figures, $225 to $250 per front foot.

1009 And in answer to cross-interrogatories propounded to him by Mr. Boyle, attorney general, the witness testified as follows, to wit:

Q. You base your valuation on what you understand they paid for it?

A. I do, partly on what they paid for it, and also on its relative worth as a railroad center, or, rather, for terminals of railroads, and also because of the demands for commercial purposes. Those are the bases on which I make my valuations.

Q. Have you dealt in real estate?

A. I have to a great extent. I will say that I have had more to do with real estate in that locality than any three real-estate agents in the city—that is, directly and indirectly; directly for the church, and indirectly because I was the occasion of getting so many people to purchase property, and in many instances the money passed through my hands.

Q. When did you do that?

A. I began in 1872.

Q. How much did you pay?

A. I paid for one side nineteen dollars a foot, and on the other twenty.

Q. Then you purchased a great deal of other property for your parishioners?

A. Yes, sir.

Q. Who desired to get near the church?

A. Yes, sir.

Q. What did you pay per front foot for those little purchases?
A. In some instances I paid fifteen dollars.
Q. For this same property that sold for $225 to $250 per front foot?
A. I cannot say that property; that was sold to the railroads for $250. My purchases were on Wyoming street and some on Genesee.
Q. You paid from five to fifteen dollars a front foot?
A. Yes, sir.
Q. And sold it afterwards?
A. They sold it to the railroads for $200 and $250 per front foot.
Q. Did you buy any property on Genesee street?
A. I did; yes, sir—that is, I induced persons to buy on Genesee street.
Q. When was that?
A. I think it was in 1878; I am not positive now; I have no data with me, but, if my memory serves me, in 1878 and 1882 I made purchases.
Q. What did you pay per front foot then?
1010 A. Something like fifty dollars a front foot, and, in one instance, one hundred dollars.
Q. How much did you buy at that?
A. Only ten feet.
Q. Where was that?
A. On Genesee, about 14th; south of the southeast corner.
Q. Whom did you buy that for?
A. I said I bought; I really sold. I had charge of an estate.
Q. To whom did you sell it?
A. I don't remember the name of the man. I sold it for an estate of orphans.
Q. That is now included in the stock yards?
A. No, sir; that is not.
Q. Where is it?
A. Immediately east of the stock-yards property.
Q. On Genesee street?
A. On Genesee.
Q. What kind of a business occupies it now?
A. There is a building on it—a residence building.
Q. The street cars run right by it?
A. Yes, sir.
Q. That is the only building on that side of the street?
A. It is on the east side of the street; there is quite a number of buildings there.
Q. Now, do you know the property on Wyoming street?
A. Yes, sir; the value there; we think it is worth $250 a front foot.
Q. And on Liberty street, the next street.
A. Liberty is about the same—$225 to $250.
Q. That property is all held at that price down there?
A. It is held at that price.
Q. There is a good deal of demand for it, is there, at that price?

A. No, sir; there is no demand just now that I know of. We are looking to a future demand.

Q. From the stock yards?

A. No; I cannot say from the stock yards; from the railroads.

Q. You are holding it at a prospective, speculative value?

A. Yes, sir.

Q. As you go further east property becomes more valuable?

A. There is nothing east, virtually; there is just one block. There is one block east of Liberty street and then the railroads come in.

1011 Q. What street is that?

A. That is Hickory street.

Q. What is the real value, if you know, of that property?

A. On Hickory street?

Q. No; of all that property.

A. I put it at $225 to $250 per front foot.

Q. It is not a speculative value at all?

A. I could not say it is speculative, because the demand we look for gives it its value.

Q. You are hoping that something may occur in the future?

A. Yes, sir.

Q. That is what you call speculative?

A. I presume so.

Q. That is the kind of value you put on this property?

A. No; I would not put it that way; partly speculative and partly because it is worth that much.

Q. That wanted it for that purpose?

A. Yes, sir.

Q. If an individual wanted it, it would not be worth that?

A. But the railroads want it and have got to have it; they have a portion of it condemned.

Q. The railroad companies?

A. Yes, sir.

Q. It is being condemned at that price?

A. It is not being condemned at any price; it is condemned for railroad purposes.

Q. You say that property has been condemned through there at that price?

A. A portion of it; yes, sir.

Q. Where is the church property?

A. On the west side of Wyoming street.

Q. How much of the church property did it take?

A. 100 feet.

Q. Did that cut into your church property?

A. They took the church and pastoral residence.

Q. And you have to move out of there?

A. Yes, sir.

Q. Of course there is some value placed upon your church, is there not?

A. Yes, sir.

Q. And also some value placed upon the location that *that* you have there for a church?

A. Yes, sir.

Q. Now, that is not the naked land value, $225 a front foot?

A. That is the naked land value.

Q. Don't they allow anything for improvements?

1012 A. They will when it comes before the court.

Q. Is that included in your estimate?

A. No; I said that was the value of the naked land.

Q. This property that was sold along there for $225 to $250 was for the naked land value?

A. That is the way we *guaged* it; yes, sir.

Q. When the stock yards company purchased this land it purchased a great many business houses?

A. They did; yes, sir.

Q. And they paid $225 a front foot?

A. They paid more in some instances.

Q. But as a general proposition it cost that ratio?

A. Well, no; I put it higher; I would say between $225 and $250.

Q. They paid that for the naked land, did they, Father?

A. Well, I don't know whether they did in every instance; I know instances in which they did; they paid as high as $300 a foot for the naked land and gave the man everything that was there, even to the sidewalks and trees.

Q. In these business blocks that they bought there did they pay that much for the naked land?

A. I could not say about that; they paid more for the business property; they paid as high as a thousand dollars.

Q. A foot?

A. A foot.

Q. Then they allowed something for the business houses, did they?

A. Yes, sir.

Q. And a man's business that was taken away from him they bought out?

A. I don't know what they had in their minds when they disposed of the property.

Q. Well, take a saloon down there which is near the stock yards and has a lucrative business and a great many customers; now, when the stock yards company bought out the owners of these institutions such as they have on Genesee street, paying twenty or thirty thousand dollars for a lot, do you mean, Father, that they didn't pay anything for the saloon?

A. I don't mean to say anything about that; of course, I should say they paid for the man's business as well as for his property.

Q. That is what I think and that is — wanted you to realize, because actually that is the fact. I believe that is all.

1013 And in answer to redirect interrogatories propounded to him by D. R. Hite, Esq., counsel for the complainants, the witness testified as follows, to wit:

Q. You said something about a railroad going through there. What railroad is that?

A. The Rock Island road. I believe it is called the Nebraska road, but it is the Rock Island.

Q. Now, all of the property that they took through there for their right of way, was it improved or unimproved?

A. It was improved, covered with frame buildings in nearly every instance.

Q. Were they valuable buildings?

A. No, no, sir; they were ordinary two-story frame buildings.

Q. What do you say was the price paid by the railroad company for this land that they bought?

A. It averaged $250 per front foot.

Q. About how deep are those lots, Father Dalton?

A. 127 feet and 6 inches until you come up to 15th street. They do not go so far back there. There was a subdivision made there at one time, and the lots are shorter.

Q. I believe you were inquired of as to what created the demand for property down there. Will you state to the special master what it is, in your judgment?

A. The railroads, the stock yards, the agricultural-implement warehouses, wholesale buildings; commerce generally.

Q. From your observation in that vicinity, has the price of real estate fluctuated very violently there since the boom days?

A. Well, I don't think it has. The boom was really due to railroad demands, and we have held to our prices ever since. We have got very few purchasers.

Q. State, if you know, Father Dalton, whether or not the prices you have mentioned as having been paid by the Rock Island Company were paid in condemnation proceedings.

A. In some instances there were condemnation proceedings, but they were usually paid through an agent of the company.

Q. Were there any instances where awards were made in condemnation proceedings at the figures you have mentioned?

1014 A. Well, I don't know now. I think there was some property sold on the alley; that was by appraisement made by condemnation juries, and at the corner of 16th and Genessee, I think, that was sold through a court's appraisement.

Q. Do you know what the price was?

A. I can't say; it was something about the same, though. I don't think it went much higher, if any—higher than the regular prices.

Q. How far is your church property and residence from the stock yards?

A. Just one block east of the stock yards.

Q. About how many feet would that be?

A. Well, 127 feet and 127, and 20 and then 60 feet for the street

Q. Somewhere in the vicinity of 300 feet?

A. About that.

Q. You said that you purchased the land that the church now stands upon in 1872 or 1873?

A. 1872.

Q. What were the conditions concerning that property at that time?

A. Well, the property that we purchased had been used a very short time before for growing corn; there were cornstalks on the ground when we made the purchase.

Q. What was the condition of the bottom down there in that regard?

A. There were not many people there. The stock yards was then a very small concern on the west side of the State line, facing the line. The Missouri Pacific, the Fort Scott, and the Union Pacific, and the Hannibal were the only railroads then that came into our city, and they had their terminals in West Kansas City, Missouri.

Q. Was the neighborhood settled pretty thickly at that time?

A. No, sir; very few people. The majority of the people who lived in West Kansas in 1872 were squatters who lived on the railroad lands; they lived in shanties made of boards standing upright and battened on the outside.

Q. Did that class of buildings constitute any considerable percentage of the buildings that were there?

A. Yes; it constituted a large percentage of them; it constituted nearly all of my congregation, with the exception of about 30 or 35 families.

Q. Were there any business houses or manufacturing industries in that vicinity at that time?

1015 A. There was a stone mill, a flouring mill, and an elevator—no, the elevator came afterwards; those were the only industries there were there outside of the railroads and the stock yards.

Q. The present conditions have grown up since that time; is that a fact?

A. Very largely, sir.

Q. Speaking about the Rock Island railway, you spoke of their having condemned between where you live and the stock yards.

A. It runs right through our church; that would be east of the stock yards.

Q. It is between Wyoming street and the stock yards, is it?

A. It is between Wyoming and Genesee streets; the stock yards abut on Genesee street.

Q. There is a strip of land in between the Rock Island right of way and Genesee street that is not condemned; is that the fact about it?

A. I don't know whether that condemnation goes that way. No; it is the alley that is condemned and the street, therefore it would mean all east of the alley.

Q. Then in between the right of way that has been condemned and Genesee street there is a tier of lots, is there not?

A. There is, sir.

Q. How far north and south does that tier of lots extend; from 12th to 17th street?

A. From 12th to 16th street.

Q. Is that all the land that is between the stock yards and this right of way that has been condemned now; that tier of lots?

A. That is all, sir.

Q. Now, east of the Rock Island is Wyoming street?

A. Yes, sir.

Q. And east of Wyoming street is Liberty street?

A. Yes, sir.

Q. And east of Liberty street is Hickory street?

A. Yes, sir.

Q. Now, what is there between you on Wyoming street and the east; when do you come to any other right of way of a railroad?

A. East of us there is a block between Wyoming and Liberty street, and then another block between Liberty street and Hickory street, just two blocks, and then comes the railroad property up to the bluffs.

Q. How far does that extend north and south?

A. That extends south to what would be 15th street if the street were carried out.

Q. Then there is just one full block in between that and where you live?

1016 A. I don't know that you understand me. In one instance I told you that the property condemned runs from 12th to 16th street—that is, the property between Wyoming and Genesee streets—but the property, now, that is one block east of us, ceases to be private property at about 15th street. It is owned by the Santa Fe Company. It is only one block from 15th street.

Q. If you pass one block east there is the Santa Fe Company?

A. Yes, sir.

Q. And then when you pass another block east there is the other railroad?

A. There is the Santa Fe again—that is, their freight-house—and then from there on it is all railroad property to the bluff.

Q. That is the condition of affairs; the building in of these railroads in that way has occurred since you purchased your church property?

A. Oh, yes; there wasn't so very much owned by the railroads when I came there. There was only one railroad that owned its terminals east of us, and that was the Fort Scott road. Now we have a number of other roads.

And in answer to recross-interrogatories propounded to him by Mr. Boyle, attorney general, the witness testified as follows, to wit:

Q. Do you know how much property the stock yards company owned there in 1872 when you came there?

A. No; I did know, but my memory will not allow me to say

now; but it was a comparatively small parcel. It commenced on 12th street.

Q. They owned about 40 acres?

A. I haven't any recollection as to that.

Q. Land was very cheap there then?

A. Yes, sir; comparatively cheap then.

Q. It was cheap in comparison with what it is now?

A. Yes, sir.

Q. When was the stock exchange building built, do you remember—the first wing of it?

A. That is, the new building?

Q. Well, the first part of it?

A. It was opened, I can tell you, on Christmas day, 1876.

Q. Over how much land had the stock yards spread at that time?

1017 A. My recollection is they had everything they have there, way down to 20th street.

By Mr. LITTLE: I don't understand when this last condemnation took place.

A. Our church-property condemnation?

Q. Yes.

A. The condemnation was going on—we were working about three years. I think it was in 1890.

Q. Haven't they taken possession of it?

A. No, sir.

Q. Is it in the courts?

A. Well, it is in abeyance; that is all I know. The property is condemned for railroad purposes. It stopped at that. The appraisers were appointed by the court—three appraisers. They never acted, I am told—at least, I never inquired. They said they had no instructions from the court.

Q. They never did act?

A. It never was formally condemned; that is all I know.

By Mr. BOYLE: You have charge of this church property?

A. Yes, sir.

Q. Have supervision over it and control over it?

A. Yes, sir.

Q. You do not own any property down there yourself?

A. No, sir.

Q. Other than that church property?

A. Yes, sir.

Q. That is in the name of your bishop?

A. Yes, sir.

Witness excused.

1018 CHARLES K. WELLS, a witness produced by the complainants, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to direct interrogatories propounded to him by D. R. Hite, Esq., counsel for the complainants, testified as follows, to wit:

Q. Where do you reside, Mr. Wells?
A. Kansas City, Kansas.
Q. How long have you lived in Kansas City, Kansas?
A. About seven years.
Q. Where did you reside previously to coming to Kansas City, Kansas?
A. In Atchison, Kansas.
Q. In what business were you engaged in Atchison?
A. In the practice of law.
Q. Do you practice law in Kansas City, Kansas?
A. I have been engaged in buying and selling real estate mostly since I have been in Kansas City, Kansas.
Q. Are you acquainted with the values of any lands belonging to the Kansas City Stock Yards Company?
A. I am acquainted with the value of the land that is north of the Union Pacific tracks and east of the river or east of the railroad tracks along the river.
Q. Does your acquaintance with such values arise from knowledge concerning transactions in and about that tract?
A. Yes, sir.
Q. Now, Mr. Wells, I call your attention to the tract of land marked E on the map, excluding from your consideration the 8.6 acres of land lying down along the river. I refer to the body of land of the Kansas City Stock Yards Company known as its north yards. I will ask you to state what, in your opinion, that property is worth per acre.
A. I think it is worth $125 per front foot, or $31,000 an acre.

1019 And in answer to cross-interrogatories propounded to him by Mr. Boyle, attorney general, the witness testified as follows, to wit:

Q. Do you own any land in that vicinity?
A. Well, I have some in that vicinity—some lands lying north of them.
Q. You have some land lying north?
A. I have had some that is embraced within these lands.
Q. Some land that you sold to the stock yards company?
A. Yes, sir; a small tract.
Q. How long ago?
A. Three years ago.
Q. How far north does the property that you still own extend?
A. It is a considerable distance; it is on Armstrong street. It must be five or six blocks, north and west.
Q. How much land do you still own on Armstrong street?
A. I have an interest in six or seven lots there.

Q. How long had you owned this property that you sold to the stock yards company?

A. I don't know exactly how long; not very long. I was interested in this sale.

Q. How long had you owned it before you sold it?

A. A few months.

Q. Whom did you buy it from?

A. I don't believe I could give you the name of the party from memory.

Q. What is property worth on Armstrong street?

A. I think property on Armstrong street is worth about a hundred dollars a foot, perhaps.

Q. Do you say that from experience in having lately sold property there?

A. No, sir.

Q. Do you know of any property that is selling there for that amount of money?

A. I don't know of any recent sales made there.

Q. You state as a matter of testimony here, Mr. Wells, that property on Armstrong street is worth a hundred dollars a foot?

A. Yes, sir.

Q. What is the street north and west of Armstrong street?

A. I could not tell you.

Q. Not very familiar with the streets over there? What is property worth on the next street, north and west?

A. Well, I suppose it is about of like value.

Q. How do you put this value on this property?

1020 A. I put it from sales that have been made in that tract of land that I know of—that square right there.

Q. You put this value on the Armstrong Street property?

A. Oh, no; I thought you inquired about the stock-yards property.

Q. How do you put this valuation on the Armstrong Street property?

A. From its uses and prospective value. It is valuable for railroad purposes, stock-yards purposes, and packing-house purposes.

Q. That is the reason that you put it at that value?

A. Yes, sir.

Q. You hold your property over there at one hundred dollars a foot?

A. Yes, sir.

Q. And all property over there is so held?

A. I think so.

Q. It is the prospective opportunity of selling it?

A. A good deal so.

Q. It has not that value now for any use, of course?

A. I think it would be difficult to buy it for a less price than that.

Q. You are not earning any revenue on that property?

A. Slight revenue.

Q. What are the revenues from that property per month?

A. I don't know. It is occupied by small houses that are rented. The revenue is not large.

Q. Any store buildings around there?

A. No, sir; dwellings.

Q. You hold it with the purpose that it some time — be needed by these institutions?

A. Yes, sir.

Q. Have you sold any property on Armstrong street?

A. No, sir.

Q. When did you buy this property on Armstrong street?

A. Two or three years ago.

Q. You bought it as a speculation?

A. Yes, sir.

Q. Pure and simple?

A. Yes, sir.

Q. Hence you didn't pay a hundred dollars a foot for it?

A. No, sir.

Q. How much did you pay for it?

A. I think that property cost us sixty to seventy-five dollars a foot.

Q. When was that?

A. Three years ago.

Q. That was about the time this property was sold to the stock yards company?

A. Later than that.

1021 Q. How much later?

A. I don't know; six months later.

And in answer to redirect interrogatories propounded to him by D. R. Hite, counsel for the complainants, the witness testified as follows, to wit:

Q. You spoke about values of property several years ago on Armstrong street. Will you please state to the special master what elements, in your judgment, enter into the value of property along in there about the stock yards, in the bottoms?

A. I think it is the demand by the stock yards, packing-houses, and railroads. They are buying property continually.

Q. Is it or is — not your experience that there is a demand for real estate in those bottoms?

A. I think there is the best demand in that locality that there is anywhere in the city.

Q. What, if anything, has been your experience with reference to the steadiness of values in the bottoms as compared with seven or eight years ago?

A. It was even better sustained there.

Q. What would you say with reference to the steadiness of values as compared with what are commonly called boom times? Have they been steady or otherwise?

A. They have been steadier since then.

Q. You said something about land in that vicinity being used for railroad purposes. Please state, Mr. Wells, whether or not, in

your judgment, the demand for land in the bottoms arises from the necessities of the railroads for terminals.

A. It does to a great extent.

Q. Is that one of the elements that enters into values in that locality?

A. Yes, sir.

Q. What have you to say, Mr. Wells, with reference to the quantity of lands in the bottoms available for the uses you have mentioned?

A. It is limited.

Q. Is that one of the elements that enters into the value?

A. Yes; I think it does very largely.

Q. Mr. Wells, from your knowledge of the conditions existing in the bottoms, what would you say with reference to any difficulties that might be experienced by some person who desired to buy forty or fifty acres of land in those bottoms at this time?

1022

Mr. Boyle objects to the question as incompetent, irrelevant, and immaterial. Objection sustained.

By Mr. HITE: We offer to prove by this witness that it would be practically impossible for any person desiring to purchase forty or fifty acres of land in the vicinity concerning which this witness has testified, even at the prices which he has testified to as the value of the north yards owned by the defendant, the stock yards company.

Q. From your knowledge of the conditions existing in and about the tract of land concerning which you have testified, would you say that any part of that land could be purchased for less than thirty-one thousand dollars an acre?

Same objection as before. Objection sustained.

By Mr. HITE: We offer to prove by this witness that no land could be bought in the vicinity of the land concerning which he has testified for less than thirty-one thousand dollars an acre.

Witness excused.

1023 D. S. YOUNG, a witness produced by the complainants, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to direct interrogatories propounded to him by D. S. Hite, Esq., counsel for the complainants, testified as follows, to wit:

Q. State your name.

A. D. S. Young.

Q. How old are you?

A. 64.

Q. Where do you reside?

A. Kansas City, Kansas.

Q. How long have you resided in Kansas City, Kansas?

A. Since 1881, in the city. I have resided in the county since 1869.

Q. In what business are you engaged?

A. Real estate and loans.

Q. How long have you been engaged in the real-estate business?

A. Since 1880.

Q. Are you acquainted with the lands lying in the bottoms between the States of Missouri and Kansas?

A. Yes, sir.

Q. Are you acquainted with the property of the stock yards company?

A. Yes, sir; I am well acquainted with that property.

Q. Are you acquainted with the value of lands in that vicinity?

A. Yes, sir; I am.

Q. How long have you been acquainted with the value of lands in that vicinity?

A. Since about 1873. It was all wild land then.

Q. Do you know where Genesee street, in Missouri, is situated?

A. Yes, sir.

Q. Do you know where Wyoming street is?

A. Yes, sir.

Q. Do you know where Liberty street is?

A. Yes, sir.

Q. Do you know the location of the yards of the Kansas City Stock Yards Company?

A. Yes, sir; I do.

Q. I call your attention to a map, Exhibit C. This map is placed directly with the points of the compass. Here is a little addition to the exhibit for the purpose of showing Wyoming street with reference to the stock yards. This is Genesee street?

A. Yes, sir.

Q Will you state to the special master what, in your opinion, giving it in terms of front feet of 25-foot lots on Genesee street east of the stock yards, that land is worth?

1024 Mr. Boyle objects to the question for the reason that the witness has not been shown to be qualified to answer.

By the MASTER: How far do you live from the stock yards?

A. My office is on Minnesota avenue, in Kansas City, Kansas.

Q. What is the distance from it to this property?

A. I should have to guess—about a mile. I have been familiar with all of this property ever since I came here.

Q. You are well acquainted with the location of the stock yards, and know the condition of the surroundings?

A. Yes, sir.

Q. State to the special master, Mr. Young, what, in your opinion, the property designated on this map by the letter A, comprising 42 acres lying east of the State line and belonging to the stock yards company, is worth per acre at this time.

A. Those lots would be worth, I think, from five to six thousand dollars a lot.

Q. State, then, what they would be worth per acre.

—. Ten times what a lot would be worth, or $50,000 to $60,000 an acre.

Q. Do you wish the master to understand that in your judgment the property of the company lying east of the Missouri State line is worth from $50,000 to $60,000 an acre?

A. Yes, sir.

Q. Now, I will call your attention to a tract of 40 and a fraction acres lying west of the State line and belonging to the Kansas City Stock Yards Company, and ask you to state what in your opinion that land is worth per acre.

A. That is worth more money. That is worth at least $75,000 an acre.

Q. I will call your attention to a tract designated on this map by the letter E, known as the north yards, comprising some 25 or 26 acres, and owned and used by the Kansas City Stock Yards Company, and I will ask you to state what, in your opinion, that property is worth per acre—I mean exclusive of this piece down on the river.

A. That is worth less money.

Q. Well, sir, give the special master the benefit of your judgment.

A. I believe that is worth fifty thousand dollars an acre at this time.

Q. Now, I call your attention to a piece of land that is cut by James street, and comprising 1.421 acres, and ask you to
1025 state to the master what, in your judgment, that land is worth per acre.

A. That is worth about three thousand dollars a lot. That would be thirty thousand dollars an acre. Understand, I take it the further away from the center you go the less valuable the land is.

Q. I call your attention to a piece of land owned by the company, and marked on the map by the letter C, lying west of the Kansas river, and what is known as the quarantine yards, and will ask you to state what, in your judgment, that property is worth per acre.

A. That is worth sixteen or seventeen thousand dollars an acre.

Q. I call your attention, Mr. Young, to a piece of land comprising 7.25 acres, lying north of the tract you have just testified about on the west bank of the Kansas river, and will ask you to state from your knowledge of lands what that land is worth.

A. That piece of ground is worth *worth* seven or eight thousand dollars an acre.

Q. Do you make it seven or eight?

A. Seven thousand dollars.

Q. I call your attention to a piece of land lying west of the tract called the north yards and down on the river, and I will ask you to state what, in your judgment, that tract of 8.6 acres is worth per acre.

A. That is low down, if I haven't forgotten it; that is not improved. I take it that is worth about $25,000 an acre.

1026 And in answer to cross-interrogatories propounded to him by Mr. Boyle, attorney general, the witness testified as follows, to wit:

Q. You say that land becomes less valuable as you go away from the center?
A. I think it is; that is my judgment.
Q. From what center do you refer to?
A. Where the business is done.
Q. The stock-yards business?
A. Where they are fixed here, in the building there.
Q. What has that got to do with the value of the land?
A. From the very fact it is the center of this business, and the nearer the center you get it is more valuable.
Q. The nearer to the center of this business the more valuable the land is to this business?
A. I think it is.
Q. So you say this land west of the State line is worth more money than the land west of the State line, because it is nearer the center of their business?
A. Yes, sir.
Q. And you make a difference of fifteen thousand dollars an acre?
A. Yes, sir.
Q. And the reason you think it is more valuable is because it is nearer their business?
A. Yes, sir; more convenient for their business; otherwise, it would not be worth any more.
Q. Of course, the further you get away from that center east the less valuable the property would become?
A. As you go east into Missouri, into Kansas City, Missouri, I think it is valuable up there, although I don't know so much about the Missouri side as I do about the Kansas side.
Q. It would be less valuable, so far as that is concerned, the further you go east?
A. Relative.
Q. Relative to the stock-yards business?
A. Yes, sir; of course, it is close by.
Q. If you would go up here, for instance, on Wyoming street; what is the next street?
A. Bell street; that has been condemned.
Q. Now, what is the next street?
A. Wyoming street is the next street, is it not?
Q. Where is Genesee street?
A. Here.
Q. Where is Wyoming street?
A. Here.
1027 Q. What is the next street?
A. I don't know.
Q. Your memory is poor, possibly?
A. No; I think not.

Q. That is within two blocks of the land that you testify is worth sixty thousand dollars an acre.
A. I know it is; on the other side.
Q. But you have testified to this land in Missouri?
A. Yes, sir; this strip here.
Q. Do you know what the value of property is on Liberty street?
A. No; I don't; not up here; it is worth less money.
Q. I know, evidently from what you say it is.
—. That is what it is.
Q. What is property worth on Liberty street?
A. Near the center here?
Q. Don't you know where Liberty street is?
A. Yes, sir.
Q. Where is it?
A. Here on this side, in Kansas City, Missouri. I have never been over this ground.
Q. You don't know anything about it?
A. I have been about the stock yards.
Q. How do you get at the valuation of this land?
A. Just from its center and from the business that is there.
Q. What business?
A. The amount of business about there.
Q. What business; of the stock yards?
A. Their general business.
Q. The stock-yards general business?
A. Yes, sir.
Q. Do you know anything about the stock-yards business?
A. I have seen a great deal of it.
Q. Have you ever been engaged in it?
A. No, sir.
Q. But the value, Mr. Young; I couldn't see exactly where you get your valuations, but now I catch your point.
A. I know of big prices that have been paid for land there.
Q. Of course, they didn't pay any such big prices for this land over here?
A. What they bought in the early times, of course, they didn't.
Q. That land has increased in value simply because the stock-yards business has increased in value?
A. Yes, sir.
Q. It is a very profitable business, and the land they occupy is very valuable; worth lots of money?
A. Yes, sir; and it naturally increased all the property about it.
Q. You value this property as you do because of the large
1028 business that the stock yards company is doing upon it?
A. Yes, sir; of course, naturally.
Q. As you judge from the center of their business here?
A. Yes, sir; there are other immense enterprises just about there, you know.
Q. You have been in the real estate business down here, have you, Mr. Young?
A. I never sold anything down here.

Q. You are not familiar with the values of property in Missouri?
A. No; I can't say that I am.
Q. Now, what is there west of this here? This is the Kaw river, is it not?
A. Yes, sir.
Q. You have sold no land right around this portion of the exhibit that is marked B, have you *have you?*
A. None on this side of the river at all until you get further down.
Q. That is, go further south beyond the stock-yards ground—I mean north?
A. Yes, sir; north.
Q. I am specially calling your attention to that portion of the map that is south of the Union Pacific railway and that is east of the Kansas river. You have sold no land around that portion of the country?
A. No, sir.
Q. And you don't know anything about the value of land around that portion of the country?
A. Well, I haven't sold any; no. It has been offered at very large prices.
Q. But you haven't sold any of it?
A. No, sir.
Q. You don't pretend to be familiar with the valuation of land in Missouri?
A. Not over here; no, sir. Over on that side I know a good deal about it.
Q. You know a good deal of property over on the west side of the Kansas river?
A. Yes, sir.
Q. And you put this property at——
A. Sixteen to eighteen thousand dollars.
Q. That is C. How did you get that valuation?
A. I know of a little tract having been sold right in here to Swift & Company, $\frac{400}{1000}$ of an acre, for $12,500 cash.
Q. What other pieces of ground do you know of?
A. That is all.
1029 Q. Is that the basis upon which you fix your valuation?
A. That is one of them.
Q. That fixed this valuation at sixteen or eighteen thousand dollars?
A. Yes, sir.
Q. That would be more than double?
A. Yes, sir.
Q. Is that one of the *guages* by which you fix that value?
A. Yes, sir; then I know what property is worth just beyond that.
Q. Where is that?
A. Up the Kaw river, west.
Q. Is that the property that you are referring to now, west?
A. Yes, sir; west of the Kaw river.

Q. I know this other property that you refer to.
A. I don't remember who sold it to them; I know it was sold for packing purposes.
Q. How much?
A. How much land?
Q. Yes.
A. I don't know; a large amount.
Q. Forty or fifty acres?
A. Probably that much altogether.
Q. You don't know who sold it to them?
A. No.
Q. Do you know when they bought it?
A. They bought it some years ago.
Q. You are gathering all this by hearsay and rumor?
A. Oh, no.
Q. You had no business with it?
A. No, sir; I didn't, but I can see the records.
Q. What records?
A. Of Wyandotte county.
Q. Do the records of Wyandotte county show that this land is worth sixteen or eighteen thousand dollars an acre?
A. It shows what they paid for it.
Q. Does it show that they paid that much money for it?
A. No; I don't think it does. I was looking for those fellows to see what they paid.
Q. When?
A. In different times; I kind of followed it.
Q. What for?
A. To keep track of it.
Q. Have you ever been on any condemnation boards or anything of that kind over there around this property?
A. I was on the Rock Island condemnation. That was only on the other side.
Q. Where were you?
A. In Armourdale.
1030 Q. How far from the stock yards?
A. Oh, close by.
Q. When was that?
A. When they built that road—three or four years ago.
Q. How much land did you condemn?
A. Just condemned a right of way through the whole town from the river up.
Q. Did you condemn any stock-yards property?
A. No; I think not.
Q. This land here you value at seven thousand dollars, marked D on the map?
A. That is unimproved, low ground.
Q. This is improved up here?
A. This has all been filled in, and a stone wall built along the river to protect it.
Q. And that is one of the things that gives it this great value?

A. Certainly.

Q. Has this land over here been filled in, A and B?

A. I don't think they require it.

Q. And this piece is worth seven thousand dollars an acre because it is not filled?

A. That is one reason why it is.

Q. Would that be worth seven thousand dollars for packing-house purposes or stock-yards purposes?

A. Of course; for residences it wouldn't be worth anything.

Q. For anything else would it be worth that?

A. For anything that men wanted it for; for enterprises here.

Q. That land is below low-water mark now.

A. No; it is not below low-water mark.

Q. How much of a fill have they got to make there?

A. I think as much as they did here, six or eight feet.

Q. I wish you would tell the master how you get seven thousand dollars of value into that land.

A. Just from the surroundings. There is bound to be great improvement there.

Q. What can it be used for?

A. Factories of any kind.

Q. What kind of factories?

A. Any kind of factories that might come.

Q. Well, a sash and door factory?

A. Yes, sir.

Q. What do you know about a sash and door factory; how much do you know about a sash and door factory?

A. It is right in the center of business; here is the great
1031 town of Armourdale, and Kansas City, Kansas, right on the other side.

Q. Did you ever buy any property for any of these large factories?

A. No; I never did.

Q. Were you ever engaged in manufacturing enterprises?

A. Not here.

Q. Where?

A. Back East.

Q. What kind?

A. Foundry; iron works.

Q. How long ago?

A. A great many years ago.

Q. Not in the modern time?

A. When I was about as old as you are.

Q. That is a long time ago.

A. A good while ago.

Q. Now, Mr. Young, as a matter of fact, all the information in the world that you have about this is that you have heard that land was sold for quite high prices; is that so?

A. I know that because the records show.

Q. You don't know anything about any sales of this land for these business purposes?

A. I know it is valuable because it is right in the center of the city.

Q. Of course, the fact that it is used for stock-yards purposes does not enter into your calculations at all, does it?

A. Any big concerns that wanted to come here would have to pay that much for it.

Q. Suppose this land was all vacated and the stock yards company was not there—you understand—all these pens and buildings were off of there, would that land be worth $75,000 an acre?

A. Certainly not.

Q. Why not?

A. Because it would be vacant land.

Q. But if anybody wanted to use it for great enterprises?

A. It wouldn't be worth any such money.

Q. What constitutes the value of real estate?

A. What you can use it for; what you can get out of it; what business you can put it to.

Q. The rental value of it is one of the things, is it not?

A. Oh, no; you have got to use it for business.

Q. The rental value is one of the things?

A. Yes; what it would rent for.

Q. If you should put a store building upon it or anything of that kind, the rental value of the building would constitute the value of the land?

A. Residences or common store buildings don't make the
1032 prices of land like great enterprises, like stock yards and packing-houses.

Q. Then you put this value upon this land because the stock yards are there?

A. Because great improvement is there about it.

Q. What is the value of these lots over here on Central avenue, marked *e?*

A. The company don't own them.

Q. I don't care whether they own them or not; what is the value of them?

A. That is a valuable corner to get down to the river; some lots sold there recently for six or seven thousand dollars.

Q. And you value them at six or seven thousand dollars apiece, do you?

A. No; I don't think I should; about four or five thousand dollars apiece.

Q. How many lots to the acre?

A. Ten. For 60 feet, instead of 120, I believe they paid $4,800 for one lot.

Q. Who was it that bought that?

A. I think Mr. Bridgens bought it.

Q. Whom did he buy it for.

A. I couldn't tell you; I believe he bought it for himielf and his partner.

Q. What is their business?

A. Real estate; they may have bought it for somebody else; I don't know.

Q. What is the consideration that appears in the deed?

A. I think $4,800. They thought they got it very cheap.

Q. For how much?

A. I think 60 by 25 feet; I think it is only 60; there is a railroad going through and they wanted it.

Q. And the property had been condemned, had it?

A. No; I think not.

Q. They probably bought it for a little speculation?

A. That I wouldn't say, because I don't know; it is very natural that they would, though.

Q. You figure that the cost of some special lot, in a certain vicinity, at a very large price, is a criterion to go by in determining the value of all the property immediately in that vicinity?

A. No; I don't.

Q. You say that store buildings and improvements of that kind don't improve property as much as these large enterprises?

A. As these great enterprises.

Q. So, therefore, the nearer you get to the center of the
1033 city the less valuable property becomes?

A. Oh, no. When you get into the center of the city the property is more valuable. In Wyandotte we have only one street that is valuable.

Q. What street is that?

A. Minnesota avenue.

Q. That runs in what direction?

A. It runs right west from the river.

Q. As you go north and south from that street the land becomes less valuable?

A. Oh, yes; on the very next street lots are worth $250. On the avenue lots are worth $9,000.

Q. That is the main business street?

A. Yes, sir.

Q. As you go further north away from the main business street property becomes less valuable, does it?

A. It varies according to the lay of the land; some lots lays very nice for building.

Q. There has been quite a boom in real estate in the last two or three years, has there not?

A. The boom has been the other way.

Q. Do you mean to say that land has been decreasing in value in Kansas City?

A. That is what I do; in Kansas City, Kansas.

Q. In the last three or four years?

A. Since 1890 and 1891.

Q. Land is cheaper than it was?

A. Certainly; the boom was on here; the boom began to decrease in 1891; men had overspeculated.

Q. This land must have been worth a million dollars a foot during the boom days?

A. I don't suppose it made much difference to them because they were using it for their business.
Q. What direction is the stock yards from Minnesota avenue?
A. It is south and west.
Q. Don't land decrease in value as you go south from Minnesota avenue?
A. As you go south?
Q. Yes.
A. Yes, sir; as a rule.
Q. Do you live on Minnesota avenue?
A. No; my office is on Minnesota avenue. I live this side, three or four blocks.
Q. North or south?
A. South.
Q. And live about how far from the stock yards?
A. About a mile; at least a mile.
Q. What is land worth there where you are living?
A. I was interested in one little tract of 5¾ acres that we paid $11,000 for.
1034 Q. When did you buy it?
A. 1890.
Q. Land was higher then than it is now?
A. Yes, sir.
Q. Where is that piece of land?
A. It is on 6th street.
Q. South of Minnesota avenue?
A. Yes, sir.
Q. How much is it worth now?
A. I don't know.
Q. What is the value of property over there; what is the market value; what do people hold it at?
A. It is not selling at all now.
Q. Is there any property for sale over there in the neighborhood where you live in a block or two there?
A. Oh, yes; in a block or two.
Q. What is it worth?
A. Worth three or four hundred dollars a lot.
Q. How much is that an acre?
A. Ten times that. Ten lots with the streets and alleys make an acre. Take the best part of Wyandotte, on the ridges, where it lays up nicely, they have not depreciated near so much as the lower lands.
Q. The lower lands have depreciated most?
A. Yes, sir.
Q. As you approach the river?
A. Yes, sir.

Witness excused.

1035 D. S. YOUNG, a witness heretofore duly sworn on behalf of the complainants, upon being recalled, in answer to direct interrogatories propounded to him by Mr. Hite, counsel for the complainants, testified as follows, to wit:

Q. You stated in your cross-examination that one of the reasons that led you to place the value that you did place upon this property was the demand for it by large enterprises?

A. Yes, sir.

Q. Will you plase state to the court more fully, Mr. Young, what enterprises you had in mind?

A. Packing-houses. I think a car factory is going to build a plant in there. This ground is wanted for enterprises of that kind that desire to come here because it is a great city.

Q. Is the quantity of land in the bottoms limited?

Objected to and withdrawn.

Q. State from your knowledge of the conditions in the bottoms whether there is a large quantity of land available for these enterprises that you have mentioned.

Question objected to and not answered.

Q. How long have you lived in Kansas City, Kansas?

A. I have lived in Wyandotte county since 1880.

Q. How many times have you passed in and about the stock yards during that time?

A. Oh, I don't know; a great many times; hundreds of times.

Q. Have you seen the land hundreds of times?

A. Yes, sir.

Q. Do you know how the land lies down there?

A. I do.

Q. Are you acquainted generally with the various kinds of industries that are in the bottoms?

A. Generally on the other side of the river.

Q. The stock yards company owns land over there on the other side of the river?

A. They do.

Q. I will ask you the question again. State from your knowledge of the conditions of the bottoms whether there is a large quantity of land available for these enterprises that you have mentioned on the west side of the river.

A. It is certainly limited on the west side of the river.

1036 Q. You speak of it being limited. Do you mean that there is very little land available for the purposes you have mentioned?

A. I think there is very little.

Q. State what are the elements that enter in your judgment.

A. In the first place, there is a big stock yards, the packing-houses, beginning at Fowler's and Armour's and going around the Missouri river and up the Kaw river, Swift and two or three others, and other large enterprises there, and the ground for those purposes is limited.

Of course, they can go further up the river, but it takes them away from the center, and the less valuable it is.

By Mr. BOYLE: From the center of what?

A. From the stock yards.

Q. Why would they have to go up the river?

A. There is no other land available.

Q. No other land available where?

A. In the town of Armourdale. They could buy houses and lots, but I think there is very little land there that could be bought for enterprises of any kind. There is a strip up the river, southwest, at the southern bridge.

Q. Do you know whether there are railroads terminals in the bottoms you are describing?

A. I know of one; I think there are two.

Q. Has either one of these come in there since you were there?

A. In the bottoms?

Q. Yes.

A. They have all come in there.

Q. You have said something about your being a juryman in some condemnation.

A. Yes; for the Rock Island.

Q. You were inquired of whether you knew of the Rock Island having condemned property there. Do you know?

A. You mean the prices that they paid?

Q. Yes.

A. They ran through part of Armourdale; I think the lots were appraised; $1,650 was the highest price; they didn't take any lots that had valuable improvements on them at all; had little cottages.

Q. Does the Rock Island road or its terminals extend any further towards the stock yards?

A. Oh, they cross the river.

Q. Do you know anything about the condemnation proceedings across the river?

A. No; I don't.

1037 Q. How far west of the Rock Island bridge, for instance, is the land that you mentioned as having been sold for $1,600 for a lot?

A. From a quarter to half a mile.

Q. From the Rock Island bridge?

A. Yes, sir.

Q. On the Kansas side?

A. Yes, sir; it went through the northern part of Armourdale.

Cross-interrogatories by Mr. BOYLE:

Q. That was the highest price that was paid for any lots?

A. I think it was the highest price.

Q. There were not any very valuable improvements on those lots?

A. No.

Q. Of course, if there were, they would have brought a higher price?

A. Yes, sir.

Q. That always enters into the cost where a person has to buy a large block of houses, and the business that is done in them is always put into the cost of the property?

A. These were all residence cottages. Of course, if you condemn a man's lot and take it you have to pay him not only for the lot, but for the improvements.

Q. And if he had a business on there you would have to pay him not only for the lot and the improvements, but for the business also that he would have to give up?

A. We would pay him what he thought his business was worth.

Q. And if it was located where there was a large and lucrative business you would pay him accordingly?

A. Yes, sir.

Q. You would pay him more than if the business was worth less?

A. We didn't go through a part of town where there was any business at all.

Q. But if you did that would be the rule?

A. We would have to do it.

Q. The naked-land value would be separated from the business value of the land?

A. Yes, sir.

Q. You spoke of these stock yards being worth so much an acre. Do you mean by that, Mr. Young, just the naked land without the improvements on it, without the business that is there on it, or do you mean the land as it is there now, as it is located, with its improvements, water mains, and everything, and with the business built upon it?

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A. I mean the land for the purposes for which it is used, but independent of the improvements.

Q. You mean the naked land?

A. I mean the naked land, the way it *it* is used by the stock yards company, is worth that money.

Q. That is, this land over here in Missouri that you value at fifty or sixty thousand dollars an acre, that land is worth fifty or sixty thousand dollars an acre, just the naked land, without anything on it and irrespective of any enterprise that is located on it?

A. No; I didn't say that.

Q. What did you say?

A. I say the enterprise that is located on it is a large element. For the purpose, the naked land is worth the price I put on it.

Q. So the land on the west side of the Kansas river is limited, is it, for purchase at the present time?

A. On that side; I think so. I know there is a narrow strip up the river that, I think, can be bought for anything of this kind.

Q. You speak doubtingly and hesitatingly.

A. I can't state positively, because I don't want to say anything that I don't actually know.

By Mr. HITE:

Q. This land that the stock yards company has would be just as valuable for railroad purposes, would it not?

A. Yes, sir.

Witness excused.

1040 A. A. WHIPPLE, a witness produced by the complainants, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to direct interrogatories propounded to him by D. R. Hite, Esq., counsel for the complainants, testified as follows, to wit:

Q. Where do you reside?

A. Kansas City, Missouri.

Q. How old are you?

A. 45 years old.

Q. What is your business?

A. Real estate and loans.

Q. How long have you been engaged in the real-estate business?

A. About 18 years.

Q. Is it part of your business to determine and act upon information which you possess or should possess in your business with reference to the values of real estate in Kansas City, Missouri, and Kansas City, Kansas?

A. Yes, sir.

Q. Can you state approximately the extent of your real-estate transactions during the past 12 months?

A. They have been about a quarter of a million dollars during the past twelve months.

Q. Times have been dull during that time, have they?

A. Yes, sir.

Q. Can you state to the court any transactions of considerable magnitude that have come within your professional care in recent years?

A. Yes.

Q. Will you do so?

A. I sold what was known as the Bullene property, involving about a million dollars in one transaction; I sold the property north of the American national bank, which involved about $15,000; I sold the corner of Tenth and Fillmore for $140,000—another transaction; I sold what is known as the Roanoke addition, involving $707,000, and various other transactions, running from a small amount up to $150,000. Our business runs as high as a million dollars some years and other years as low as a quarter of a million.

Q. Have you been called upon in recent years to act in the capacity of appraiser and as a real-estate expert?

A. Yes, sir.

Q. Name an instance.

A. I was one of the commissioners of the Mason estate, involving a million and a half of dollars.

Q. Are you acquainted with the property in the bottoms
1041 of the Kaw and Missouri rivers?

A. Yes, sir.

Q. Have you had frequent occasion and opportunity to examine the lands in those bottoms?

A. Yes, sir.

Q. Are you acquainted with the values of real estate in the vicinity of the Kansas City stock yards, Mr. Whipple?

A. Yes, sir.

Q. In making up the judgment that you possess concerning the values of real estate in and about the stock yards, what elements enter into your judgment, Mr. Whipple?

A. I take into consideration the general situation down there. There is about six or seven hundred acres of land down there bounded by the Missouri river on the north, by high bluffs on the east, and on the west by the Kaw river, which is in the shape of a letter V; the east third of that tract is occupied by railroads; the Atchison, Topeka & Santa Fe and the Kansas City, Fort Scott & Memphis come in from the south and have their yards in there; the Chicago & Alton, the Kansas City, St. Joe & Council Bluffs and the Rock Island are on the west, and on the north the Wabash, the Union Pacific, and the Missouri Pacific; they take up nearly all of the northeastern portion of the V; there are in all 26 lines of railroad which have their terminals which come in either on their own tracks or over the tracks of the Kansas City Belt or the Kansas City Suburban Belt railway. In other words, the terminals of these 26 lines of railroads, representing a mileage of about 50,000 miles, have their terminals down in the bottoms; all of the freight-houses of these railroad companies are down in the bottoms; that is one of the elements that makes these bottoms valuable; there are wholesale-grocery houses down there that do a business of ten millions a year; there are some 65 agricultural-implement houses that do a business of about 20 millions a year; the stock yards do a business of about one hundred millions a year, and the packing-houses a business of fifteen millions a year; it is possible for the railroads to run to any part of the bottoms and they have come in from the north, east, and west until there is a very limited territory between them; the Rock Island has recently pushed up from the west into the center of the territory and the territory is becoming smaller and smaller with every railroad that comes in here.

Now, this land has gone from a mere nominal price up and
1042 up and up as these different enterprises were located in there until the area has become comparatively limited and one can only value the property on one side of the bottoms by comparison with the value of that on the other side; it is all about the same.

Q. You spoke of wholesale houses being in there.

A. Yes, sir; there are some six or seven of them.

Q. What, in your judgment, is the reason the wholesale houses seek the bottoms?

A. They have located there on account of the saving in drayage

and switching charges. In that location it is possible for them all to have railroad tracks right in their houses; some of the houses now down there left the buildings which were built for them and in which they were established up here in the city and moved down to the bottoms on account of the great advantage in doing business down there. There is another point that I forgot to mention, the question of time in getting out orders; that is often a strong consideration; if they fill orders today which are received today it suits their customers better and enables them to compete more favorably with their competitors in other cities.

Q. What, in your judgment, is the reason the railroads have put their terminals in the bottoms?

A. The primary reason is that they can get in there and cannot get up on the hill to so good advantage.

Q. The physical conformation of the ground is one reason?

A. Yes, sir; another reason is that after they started down there the business houses began to locate down there, depots were located there, and they were forced to go there by the competition.

Q. Are you acquainted with land in Kansas City, Missouri, up in the vicinity of Main street?

A. Yes, sir.

Q. Are you also acquainted with the values of lands west from the bottoms over in Armourdale and west of there?

A. Yes, sir.

Q. Please state to the master what variations in prices would occur in such a territory as that.

A. The average land in the bottoms is worth about $50,000; at Main and Tenth it would be worth $675,000.

Q. As you go west up on the bluffs or on the Kaw river,
1043 does the land diminish in value?

A. The land diminishes in value as you go up on the bluffs; also as you go from the bottoms into Armourdale.

Q. In estimating the value of real estate, Mr. Whipple, what considerations enter into the judgment of a man accustomed to dealing with such subjects?

A. A good many things enter into the cons-deration of it. In the first place, the size of the city, the business that the city does, the kind of business the city does, the location of the particular property with reference to the center of business, and the use to which it can be put and the rental that it will bring. There are many things that go to make up the value of property.

Q. I call your attention to a tract of land marked on the map by the letter A, comprising 42 acres, lying east of the State line and west of Genesee street, belonging to the Kansas City Stock Yards Company, and will ask you to state if you are acquainted with the value of that tract.

A. I am.

Q. Will you state to the master what, in your judgment, the present actual value of that property is per acre?

A. It is well worth sixty thousand dollars per acre.

Q. I call you attention to the tract which lies immediately west

and adjoining the tract I have just spoken of, and which is marked on the map by the letter B, comprising 40 acres and a fraction, and will ask you to state if you are acquainted with the value of that property.

A. I am.

Q. What, in your opinion, is that land worth per acre at this time?

A. I think it is worth $37,500 per acre.

Q. I call your attention to a small tract now that is cut by James street, which lies north of the Union and Missouri Pacific tracks, and will ask you to state to the master if you know the value of that tract.

A. I do.

Q. What, in your opinion, is that tract worth per acre at the present time?

A. I think it is worth $37,500 per acre.

Q. I now call your attention to what is known as the north yards of the Kansas City Stock Yards Company, designated on the map by the letter E, and will ask you if you are acquainted with
1044 the value of that property; exclude that part of the tract lying west of Water street. Do you know the value of that property at this time?

A. Yes, sir.

Q. State to the master what, in your opinion, that land is worth at the present time.

A. I think it is well worth $25,000 an acre.

Q. I call your attention to the tract marked C C on the map, lying west of the Kansas river and belonging to the Kansas City Stock Yards Company, being part of the quarantine yards of the company, and will ask you to state if you know the value of that land.

A. Yes, sir.

Q. What is the value of that tract of land at this time?

A. I think that is worth $15,000 an acre.

Q. I now call your attention to the tract marked D, containing 7 acres and a fraction, lying west of the Kansas river, and ask you if you know the present actual value of that land.

A. I do.

Q. State to the special master what, in your judgment, that land is worth at the present time.

A. $6,500 an acre.

Q. I now call your attention to the piece of property which we excluded from your consideration in the tract marked E. It consists of approximately 8.6 acres, lying down on the east bank of the Kansas river and west of the north yards of the company. Do you know the value of that tract of land?

A. I do.

Q. Please state what, in your opinion, that piece of land is worth at the present time.

A. I will modify my answer. I know what it is worth if it were

filled. It would be worth ten thousand dollars an acre if it were filled.

Q. You are not prepared to express an opinion as to its value in its present condition?

A. No, sir; I don't know what it would cost to fill it.

1045 And in answer to cross-interrogatories propounded to him by Mr. Little, the witness testified as follows, to wit:

Q. Have you been engaged in any other business except real estate?

A. Yes; I was four years in the banking business, cashier of the Citizens' national bank for three years and of the American national bank for one year.

Q. How long since you returned to this business?

A. Three years ago.

Q. You say your business has run from a million to a quarter of a million?

A. Put it the other way; I said it would run from a quarter to a million a year.

Q. Your business last year was a quarter of a million?

A. Yes.

Q. Then I was right; it has run from a million down to a quarter of a million? Q. How do you account for the fall in your business?

A. In the inactivity of the market and the inability to make large sales.

Q. There don't seem to be the demand for land there used to be?

A. The demand for land is not alike each year.

Q. There is less demand than there used to be.

A. There is more small pieces of property selling this year than I have sold for quite a number of years; there have been no large sales to speak of this year as yet.

Q. The demand for land is less this year?

A. In front feet, no; in large-sized tracts, yes. We have made somewhere about 36 sales this year, but they have been mostly of small pieces.

Q. Is it not a fact that you are compelled to devote yourself to small sales because you can't get big ones?

A. Yes, sir.

Q. That accounts for the increase of small sales?

A. No; the market accounts for it more.

Q. The less expert men are going out of the business and you are taking up the smaller business?

A. Oh, no; there are more firms now than a year ago?

Q. But less business?

1046 A. It is just as I said before; we have made more sales this year than we made last year, but we have not earned so much money.

Q. There has been a cessation of large transactions?

A. Yes; there has been a cessation in them.

Q. Where were these small sales that you spoke of?

A. Quite a good many of them were over in Armourdale, west of the stock yards; some of them over in the south part of the city, and a good many out at Westport.

Q. To laboring men?

A. I suppose to laboring men and clerks.

Q. Do you know of any reason for the decrease in your business from a million to a quarter of a million other than those you have enumerated?

A. I don't know that I do.

Q. Just a general decline in business?

A. I don't know as I should call it a decline if we are making four times as many sales as before; the difference is in the size of the sales; one firm will have the run on large sales and another one on small sales; take it a year ago and I was making large sales.

Q. I will ask you, as an expert, if your business has decreased from a million to a quarter of a million, has it declined?

A. It has declined the amount earned, but it has increased in the amount of business done.

Q. You are testifying as an expert; now, I ask you if your business has fallen from a million to a quarter of a million, is that a decline or is it not?

A. It is a decline in earnings.

Q. A decline in business?

A. No, sir; it is not; it requires just as much business to sell 25 feet for five thousand dollars as it does to sell it for $50,000.

Q. Ain't your business increased?

A. It has just as I stated.

Q. You answer my question; has your business increased?

A. I will answer it: In amount earned, it has decreased; in amount done, it has increased.

Q. You say that this land out here is worth $60,000 an acre.

A. Yes, sir; I said it was well worth that.

Q. You testified as to the value of all the land in the bottom; did you state the value of it?

A. No, sir; only by comparison; when I was asked the difference between the value of the land in the bottoms and that up in
1047 the vicinity of the retail district, I said that the average value of the land in the bottoms was fifty thousand dollars an acre, and that property up on Main and Walnut, in the business part of the city, was worth $675,000 an acre.

Q. How much land did you say there was in these bottoms?

A. I said in the neighborhood of six or seven hundred acres.

Q. All in the city limits?

A. No; part of it is in Kansas City, Kansas.

Q. That includes both sides of the river?

A. No, sir. I bounded it on the north by the Missouri river, on the east by the bluffs, and on the west by the Kaw river.

Q. You say that will average $50,000 an acre?

A. I state that as the average price.

Q. How do you get at that price?
A. That is the general average price.
Q. Is that just a guess?
A. You may call it a guess or an estimate, whatever you have a mind to call it.
Q. On what do you base it?
A. Some of the land is worth, perhaps, not more than forty thousand dollars an acre and some of the land north of the wholesale houses is worth $75,000 an acre.
Q. How much land in the bottoms is worth $75,000 an acre?
A. I should say there were, perhaps, 20 or 30, or 40 or 50, maybe
Q. What is the cheapest land in the bottom worth?
A. I don't know of any down there that would be worth less than forty thousand dollars an acre.
Q. Didn't you testify that this 42 acres on the Kansas side was worth $37,500?
A. Yes, sir.
Q. And didn't you testify that this piece is only worth $37,500?
A. Yes.
Q. And that this piece is only worth $25,000?
A. Yes, sir.
Q. They are in the bottom?
A. Yes, sir.
Q. And didn't you testify that C over here——
A. That is not in the bottom.
Q. How do you reconcile the statement that you just now made that none of it is worth less than forty thousand dollars an acre with the fact that this piece is worth only $25,000?
A. I overlooked this, which is used by the stock yards company.
1048 Q. Do you sometimes make mistakes in your estimates?
A. I am not infallible; yes, I make mistakes.
Q. Have you made any other mistakes?
A. Not that I know of.
Q. Have you any reason to correct your estimate since you cut out this land as being worth less than forty thousand dollars an acre? Have you any reason to correct your estimate of the value of the property?
A. If I were to do anything of the kind, I would put it higher—at $50,000.
Q. Will you tell me what is the cheapest land in the bottom?
A. I think, perhaps, that land right in there would be as cheap as any.
Q. That would be the cheapest piece in the bottom?
A. Yes, sir.
By Mr. HITE: You refer to the land west of Water street?
A. Yes, sir.
Q. You say there is 20 or 30 acres that is worth $75,000 an acre. How much more is there that is worth $50,000 an acre, and where is it?
A. A tract of land bounded, we will say, on the north by St.

Louis avenue, on the south by about 13th street, on the east by the Union depot, and on the west by about Hickory street; that is worth about $65,000 an acre.

Q. How large a plot is that?

A. That would be about 5 blocks one way by—it is an irregular-shaped piece of ground; it would be hard to tell how much acreage there is in it.

Q. You can't estimate the acreage?

A. No, sir.

Q. What other land is there that is worth over fifty thousand dollars an acre in the bottoms?

A. You can take the land bounded on the north by 12th street, on the south by 16th, on the east by Liberty, and on the west by the State line, and I should say it is worth $60,000 right straight through.

Q. How much of that is there?

A. I could not tell.

Q. Why is that worth so much more than this land here?

A. Because the space is limited in there; it is gradually growing less with the advent of every new railroad in here; it is being bought up for all kinds of business.

Q. What is there on this ground you have just described?

A. The stock yards company has a part of it; business-houses——

1049 Q. Where is it?

A. From here to here would be a part of it.

By Mr. HITE: You refer to A?

A. Yes, sir.

Q. That is worth $60,000 an acre?

A. Yes, sir.

Q. And this other piece that you spoke of as being worth $60,000 an acre; what is on that?

A. Wholesale-grocery houses—seed-houses.

Q. Why do you fix it at $65,000?

A. That is about the way it is selling.

Q. When was any of it sold?

A. I made an offer for a purchaser for the land at the rate of $75,000 an acre at the corner of 13th and Hickory.

Q. When?

A. It was two years ago.

Q. To whom did you offer it?

A. Woodward & Bullene, of Lawrence.

Q. How much of a tract was it?

A. It is 120 by—I forget the frontage of it.

Q. 120-foor front?

A. Yes; that was about the size of it. I was empowered to offer them $300 a front foot.

Q. What did you want with it?

A. I said I did it for the purchaser.

Q. I say what for?

A. An agricultural-implement house.

Q. Where did they locate?
A. Didn't locate at all.
Q. Didn't come here?
A. No, sir.
Q. And the reason you say this property is worth $65,000 an acre is because of the prices it sells for. Is there any other reason. Can you think of any transaction besides this one?
A. I don't think of any very recent ones; no, sir.
Q. You base your estimate entirely upon the fact that you offered somebody $300 a foot for 120 fert and he didn't take it?
A. No.
Q. What else?
A. On the situation that I stated.
Q. That is the only price you know about in recent years?
A. Oh, no.
Q. Tell us more.
A. The Rock Island condemned through there and paid $250 on an average per foot.
Q. When?
A. Along in 1887 and 1888.
Q. I asked you for recent years; I don't want to go back to the flood. Do you know of any transaction in recent years except the one you spoke of?
A. I don't know of any transactions for less than——
1050 Q. Do you know of any transactions excluding the Rock Island and the stock yards?
A. Yes; I know of a purchase by Hines.
Q. When was that?
A. Last year.
Q. What did he pay?
A. $300 a foot.
Q. How much did he buy?
A. 50 feet.
Q. Where is that now?
A. On Genesee street south of 16th.
Q. What does he use it for?
A. For a hotel.
Q. Where was Hines before?
A. He was on Bell street below 16th.
Q. What does he use this for?
A. For a hotel.
Q. What is there there surrounding him?
A. A livery stable on the south side and a vacant lot on the north side.
Q. What is there on the other side?
A. Which side?
Q. There are four sides to him.
A. Across the street from him are the barns of the stock yards company, and on the back of him there is a house.
Q. And on the other two sides?

A. I said there was a livery stable on the south and a vacant lot on the north.

Q. There is a junction of the cable road right there?

A. There is a connection; yes. There is where the cable line connects with the electric line.

Q. They transfer from the cable road to the electric right there?

A. Yes; he is on the corner right opposite.

Q. Its location makes it specially adaptable for hotel purposes, does it not?

A. Yes, sir.

Q. Now, is not that the reason why he had to pay so much?

A. I think that is it.

Q. Do you think that is quite a fair estimate of the value of this other property—the fact that a man had to pay three hundred dollars a foot for a site that is specially adapted for hotel purposes?

A. I did not estimate it upon that basis at all. I estimated it at $50,000 an acre; this was $75,000 an acre.

Q. You said there were 20 or 30 acres in the bottom worth $75,000 an acre; where is that?

—. It begins on the north at St. Louis avenue and runs down to 16th street.

1051 Q. You say this land on the Missouri side is worth $60,000 an acre and this $37,500?

A. Yes, sir.

Q. Why is there such a difference?

A. Because of the situation. Over here on one side are the railroads and the business houses and the freight depots, and as you go further away from the business the land becomes less valuable.

Q. How about this piece of 1.4 acres over here? Why do you fix that at $37,500?

A. Because it — nearer the business, the retail business, and packing-houses.

Q. How do you know it is worth $37,500?

A. I know in a general way that that is what property has been selling in that neighborhood for.

Q. At what do you value this piece?

A. $25,000 an acre.

Q. Why?

A. That is lower than lots have sold for in there. The railroads which condemned in there in 1888 paid more than that.

Q. Have values remained just the same down there since 1888?

A. I think they have held their own since that time.

Q. Now, you say C is worth $15,000 an acre?

A. Yes, sir.

Q. Do you know what the railroads have condemned land adjacent to C for?

A. No, sir.

Q. If they have condemned it for $10,000 an acre would that modify your opinion of the value of C?

A. No, sir.

Q. How do you form your estimate of the value?

A. From my knowledge of the values of lands down there. I am more familiar with the value of land right there than any other around there, because I at one time tried to sell it to the stock yards company.

Q. What did you try to sell it for?

A. $7,500 an acre.

Q. They wouldn't buy it?

A. No, sir.

Q. Is that the only knowledge you have of its values?

A. I know of some sales further north, across the U. P. track.

Q. Did you participate in the sales?

A. No, sir.

Q. When was that?

A. 6 or 7 years ago.

Q. Is not a factor in the large prices of these stock-yards lands the fact that these outlying properties are held at a very high figure?

1052 A. Very likely that has something to do with it.

Q. Do you think that because the stocks yards company is compelled by its necessities to pay a large price for a few lots that that price fixes the values of all the property it has down there?

A. Well, I think if they bought the property as cheap as they could, the public knowing nothing about it, that that ought to be some basis for estimating the value of their property.

Q. Don't you know that the people down there are holding their property with the expectation that the stock yards company or the railroad companies will have to have it?

A. Yes, sir.

Q. The revenues of a property is one way of determining the value of the property?

A. That has something to do with it.

Q. And land to be worth $60,000 or $75,000 must bring in very great revenues?

A. Yes, sir; unless the property was growing in value.

Q. A business that will warrant the purchase of land at $50,000 an acre must be a very lucrative business, indeed?

A. Yes, sir.

By Mr. HITE: In arriving at the value of property is the growth of the enterprises surrounding the particular property under consideration a potent factor in its value?

A. Yes, sir.

Q. In your experience as a real-estate man has it become a strong element to be taken into consideration in making up your judgment concerning the value of real estate?

A. Yes, sir.

By Mr. LITTLE: Nobody has asked you about the value of these tracts marked *e*. What are they worth?

A. $37,500.

Q. Why do you make that difference between *e* and E?

A. On account of their location, being nearer to Central avenue and the passenger depot.

Witness excused.

1053 ALBERT MARTY, a witness produced by the complainants, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to direct interrogatories propounded to him by D. R. Hite, Esq., counsel for the complainants, testified as follows, to wit:

Q. Where do you reside, Mr. Marty?

A. Kansas City, Missouri.

Q. How old are you?

A. 45 years old.

Q. How long have you resided in Kansas City?

A. Nearly 32 years.

Q. Do you own any real estate in Kansas City, Missouri, or Kansas City, Kansas?

A. Yes, sir; in both places.

Q. Do you own a considerable quantity of real estate in the places you have mentioned?

A. Yes, sir; I have about 650 vacant lots in Kansas City, Missouri, and Kansas City, Kansas, besides some improved property.

Q. Are you acquainted with the property that is now occupied by the Kansas City Stock Yards Company?

A. Yes, sir.

Q. How long have you been acquainted with that land?

A. Nearly 32 years.

Q. Have you had frequent opportunities of seeing the land?

A. Yes, sir.

Q. Are you acquainted with lands in the vicinity of the stock yards?

A. I am very well acquainted with property on this side of the Kansas river. I do not get into Kansas City, Kansas, or Armourdale very often.

Q. What has been your general business? Do you mean by that that you are not very well acquainted with lands on the west bank of the Kansas river?

A. Yes, sir; but I have a general idea about property there. I have owned property in Armourdale.

Q. What business or occupation are you engaged in at the present time?

A. I am not in any business except buying and selling real estate on my own account.

Q. How long have you been engaged in that kind of business?

A. About eight years. I was in the real-estate business proper for 13 years, and for eight years I have been trading on my own account.

Q. Am I to understand by that that that covers a period of 21 years?

1054 A. Yes, sir.

Q. Are you acquainted with the values of real estate in and about the Kansas City stock yards?

A. I think I am.

Q. What has been the extent of your transactions in real estate in the last seven or eight years in a general way; have they been extensive or otherwise?

A. I don't know, I am sure. I have bought a good deal and have laid out some twelve additions to Kansas City, and now own some property in the city.

Q. Is it a part of your business to become acquainted with the values of real estate in and about Kansas City?

A. Yes, sir.

Q. Do you own any property in the vicinity of the stock yards?

A. I own some property within three blocks, I think; perhaps two blocks.

Q. What street is that property on?

A. 11th street near Liberty.

Q. I call your attention to the property marked on the map by the letters A and B, comprising 82 acres, known as the main yards of the Kansas City Stock Yards Company, and will ask you if you are acquainted with the value of that land at this time.

A. I think so; yes, sir.

Q. Please state what, in your opinion, that tract of land is worth per acre at the present time, exclusive of the improvements on it.

A. I think property in that locality is worth $200 a foot or $50,000 an acre.

Q. I call your attention to a tract of land, indicated on this map by the letter E, lying north of the tracks of the Union Pacific and Missouri Pacific railways, and comprising the north yards of the Kansas City Stock Yards Company, and will ask you to state what, in your judgment, that land is worth per acre; but first, are you acquainted with the value of that land? And I will ask you to exclude from the consideration that part of the tract lying west of Water street.

A. That is high land. I will state that I am very familiar with that property itself, and in a general way have an idea as to the value of the property. I know what the Wyandotte & Northwestern paid for their property in there, and I regard that property worth about 33 per cent. less than the property in A and B or about $33,000 an acre.

Q. You have reference now to the high land?

A. Yes, sir.

1055 Q. I call your attention now to a small tract of land that is cut by James street, which lies at the north end of the tract to which your attention has been previously called, containing, approximately, an acre and a half, and I will ask you to state to the court if you know the value of that property.

A. Yes, sir; I think so.

Q. Will you state to the court what, in your judgment, that piece of land is worth at the present time?

A. That property ought to be worth $40,000 an acre.

Q. I call your attention to some small pieces lying north of the north yards and marked by the letter *e*, and ask you to state to the court if you are familiar with the value of that property.

A. I think I am.

Q. Please state to the court what, in your judgment, that property is worth per acre.

A. I think that land is worth in the neighborhood of $30,000 an acre.

1056 And in answer to cross-interrogatories propounded to him by Mr. Boyle, attorney general, the witness testified as follows, to wit:

Q. Where do you own your land, Mr. Marty?

A. The property I have in the bottoms is at 11th and Liberty streets.

Q. That is north and east of the stock yards?

A. Yes, sir; it is not on this map.

Q. Your land is in close proximity to the stock yards?

A. I said, I think, about two or three blocks.

Q. How many lots have you there?

A. I have four. I did have 12 or 15 at one time.

Q. How long have you owned these four.

A. I don't know; perhaps eight or ten years.

Q. What do you hold them at?

A. I have not offered them for sale; they have got a five-story brick building on them, occupied by an agricultural-implement house.

Q. They are all occupied, then?

A. Yes, sir.

Q. You have no vacant lots?

A. No, sir.

Q. You own the land upon which this implement-house is located?

A. Yes, sir.

Q. Do you own the building?

A. Yes, sir.

Q. What do you hold that property at per front foot, the ground?

A. We supposed it was worth, a few years ago, $600 a front foot. I think it is worth about $400 now.

Q. What adjoins it on the east?

A. It adjoins the Union Pacific ground on the east.

Q. Does it abut up against the railroad property?

A. Yes; it does.

Q. What has made the decrease in value?

A. I don't know that there has been any decrease.

Q. You hold it at less?

A. I am not offering it for sale, and have not been.

Q. You say it is worth $400 now?

A. I think it is; I don't know but what it would bring $500 a foot.

Q. Why did you express the judgment that it is worth $400 now and was worth $600 a few years ago?

A. I think it was high at $600.

1057 Q. You think it was not worth $600 a foot?

A. No, sir.

Q. You say that your land is worth $400 per front foot?

A. I said I regarded it as worth $400 a front foot; yes, sir.

Q. What do you regard the land that is comprised in the north yards worth per foot?

A. About $133 a foot, the north stock yards; that, as I understand it, is the present hog yards, north of the Union Pacific track.

Q. What is it worth that for?

A. For railroad purposes and for stock-yards purposes.

Q. How do you know it is worth that for stock-yards purposes?

A. Because it has been selling at that; they certainly would not have paid it if they had not thought it was worth that.

Q. They did not pay that much for these yards?

A. Ground has brought that around there.

Q. They have been buying small tracts in addition to their larger tracts at those prices?

A. Yes, sir.

Q. And because they have been paying those prices for small tracts adjoining their large tract E over there, you say that the whole body of land that they previously owned is worth the same as the other?

A. I regard the whole ground as worth that. I think the Northwestern Railroad Company paid a good deal more for the ground they acquired in getting into the city. I understand that the railroads now are willing to pay at that rate or more if they can get into the city and cannot get it. I will state that ground at 10th and Main is worth $3,500 a foot and at 12th and Main $3,000, and if those dry-goods houses were not there it would not be worth more than $10,000 an acre.

Q. How do you know this would be worth $133 a foot for stock yards?

A. I don't know except that I know it has been bought for that for railroad purposes, and the stock yards company has bought it for stock-yards purposes.

Q. They have never bought this property for stock-yards purposes at such prices as those.

A. They have bought ground around there for approximately those prices.

Q. I say, is that the way you fix the value of all this acreage?

A. It is the only possible way you can fix it.

1058 Q. I am asking you how you fix it.

A. By what it is being sold for for railroads, for packing-houses, and wholesale houses.

Q. This land constituting the main yards and marked A and B you put at $50,000 an acre?

A. Yes, sir.

Q. How do you arrive at that?

A. I arrive at it the same as I do with the other.

Q. Because adjoining lots are sold approximately at those prices?

A. Yes, sir.

Q. Now, these gentlemen have first estimated the value of their improvements, and it is now our desire to fix a value upon the raw land independent of the improvements; we want to fix a value upon this land, not for stock-yards purposes, but for all purposes that it could be used for; therefore, if you can, I will ask you to consider the fact that the stock-yards improvements are off of there in order to get at the value of the land. To aid you, I will call your attention to this plat here, where the improvements are entirely off of it. Now, I will ask you to state what that land is worth per acre, not for stock-yards purposes, not for railroad purposes, not for wholesale purposes, or for any of those purposes, specifically, but considering the 82 acres as bare, without any superstructures upon them, and on the open market for purchase by any of these enterprises that persons might want to put on there, keeping in mind the fact that these railroad companies have their terminals and that these packing companies have their property there. Now, what would that 82 acres be worth per acre, with that status of affairs?

A. It is a very difficult question to answer for this reason: The very fact that the stock yards company has been located there for a great many years, they have surrounded themselves with the packing-houses; they have given largely to the packing-houses; they have gotten the packing-houses to go there, and the fact of the packing-houses now being there necessitates the stock yards being there. I cannot think of the stock yards being anywhere else; they have got to be there; the ground is worth what they have got to pay for it, and that is all there — to it. As I said before, that property for railroad terminals is worth $50,000 an acre today.

1059 Q. You think all this property is worth $50,000 an acre for railroad terminals?

A. And for stock-yard purposes.

Q. How do you know it is worth that?

A. As I told you, because they have been buying it at that rate. The railroads have been buying it at that rate.

Q. They did not buy 82 acres at that rate. I will ask you this question: The stock yards company didn't pay any such prices as that?

A. I presume they paid a hundred dollars an acre when they first bought it. I could have bought land opposite the Union depot at one time for seventy dollars an acre.

Q. Here is a piece of ground—40 or 50 acres of it—that they bought at nominal figures?

A. Yes.

Q. Now, in the natural development of their business, it becomes essential for them to secure some adjoining land?

A. And the natural development of their business has made that property exceedingly valuable.

Q. I say in the natural development of their business it becomes

essential for them to secure some of the adjoining lots. Now, do you fix the value of all the balance of this property that they own, this large number of acres, by the prices which they are obliged to pay for some of these adjoining lots? You can answer that question yes or no.

A. No.

Q. How do you fix the value?

A. By what I know has been paid. People have paid as high as four hundred and for some of the land as high as five hundred dollars a foot.

Q. Is that the way you fix the value of the balance of it?

A. No.

Q. How is it, then?

A. I stated before what the general price of property in that vicinity and locality is, and it is upon that price that I base my valuation. The Rock Island Railroad Company, as we all know, secured a large tract in there and paid over $250, on an average, per foot for that property. There is nothing that I know of that has been sold—unless possibly it was a forced sale—at less figures.

Q. What do you mean by a forced sale?

1060 A. I mean that yesterday a lot was offered me for $1,500, and that three months ago I sold an adjoining lot for $4,500.

Q. Where was that?

A. On Southwest boulevard.

Q. Where is that?

A. About a mile south of this property.

Q. Of the Coates house?

A. Yes, sir.

Q. And about a mile away from the stock yards?

A. Yes, sir.

Q. That was under foreclosure of a mortgage?

A. Yes, sir.

Q. Went under the mortgage and was sold and bid off?

A. Yes, sir.

Q. Is that a good way to discover what the market price is?

A. I don't regard it as any criterion at all of the value of property.

Q. When it is desirable property and men will give what it is worth, don't you consider that a pretty good way to estimate the value of land?

A. No, sir; I do not.

Q. What do you consider a proper way to estimate the value of real estate—what one man can extract from another whose necessities compel him to buy?

A. No, sir.

Q. One of these railroads or the stock yards, as the case may be, is compelled from the very necessities of its business down there to purchase certain *certain* tracts of land or certain lots, and the owners can simply secure such prices as they please to put upon them. Do you consider that a fair way to determine the value of land?

A. Not altogether; no, sir. As I said before, there were individ-

ual lots sold as high as four or five hundred dollars a foot; but I did not put the land at $150,000 an acre.

Q. There are a great many lots down there that have been held at $200 a foot for eight or ten years and there is no demand for them; nobody wants them at that price, but the owner comes along and says they are worth that. What makes the value of property if it is not that it can be put on the market and sold?

A. Well, I don't think that is the situation altogether. There is a great deal of property in the city that could not begin to be sold for anything like what it is generally supposed to be worth.

Q. Because business cannot afford to pay it?

A. Because there are not people at the present time who want to buy it.

1061 Q. They hold it for some prospective development?

A. I don't think so; no, sir.

Q. Where have you platted ground in the city?

A. I have platted one addition out on Independence avenue.

Q. How far is that from the stock yards?

A. That is, perhaps, three miles.

Q. What is the character of property out there?

A. Residence and business.

Q. What is it worth per front foot?

A. It is worth from forty to a hundred and fifty dollars a foot.

Q. How much property is being bought out there at a hundred and fifty dollars a foot?

A. There was a lot of 140 feet sold there a short time ago for a hundred dollars a foot.

Q. Is that a valuable location for residences?

A. It is regarded so.

Q. It is regarded as quite a valuable part of the city, is it?

A. Yes, sir.

Q. That property is held from forty to a hundred dollars a foot?

A. A hundred and fifty.

Q. Where else have you platted land?

A. I have platted three additions on Ninth street—four additions, I guess—one of 40 acres, one of 20, one of 12, and one of 6¼.

Q. When did you plat them?

A. About eight to twelve years ago.

Q. Do you know where the Rex mill site is located?

A. I do.

Q. Do you own that property?

A. I do not.

Q. Did you?

A. I owned part of it.

Q. When?

A. Many years.

Q. What is it worth per front foot?

A. It is worth, I should think, $20 to $30.

Q. Where is that located?

A. It is located, perhaps, a mile south of this stock-yards property.

Q. On which side of the river is it located?

A. It is on the same side that the major part of this property is located on.

Q. What was it used for?

A. It was used for truck gardening.

1062 Q. You say it is worth about forty dollars a foot?

A. I think I said twenty, did I not? I would state that three blocks from this property you can pay a thousand dollars a foot for ground.

Q. Where is that?

A. Opposite the Union depot.

Q. What direction?

A. It is almost immediately south of this.

Q. What is the lay of the land down there, the conformation of the ground?

A. Level.

Q. What railroad runs near it?

A. The Atchison, Topeka & Santa Fe.

Q. You refer to the mill south of the stock-yards property, do you not?

A. The Rex mill site is the property we are talking about.

Q. How far is it from the stock-yards property?

A. I said I thought it was about a mile. It may not be quite that far, but I think it is nearly that; about three-quarters of a mile.

Q. I call your attention to Bell street. Do you know where old Bell street was located?

A. Yes, sir.

Q. Do you know where the horse and mule markets of the Kansas City Stock Yards Company are located?

A. Yes, sir.

Q. Beginning down here at the south end of the company's property on Bell street and going north as far as the end of their horse and mule market and also their feed stable there, where they keep their company horses and commissionmen's horses, do you know where that is?

A. Yes.

Q. What is that worth per front foot, taking it now as a general average? Just give me an estimate of what you think that property along there on the east side of old Bell street is worth.

A. If a railroad was seeking an entrance there it could not be bought for less than $250 per foot.

Q. You think it is worth that?

A. Yes, sir.

Q. Go across the street—that is, on the west side of old Bell street.

A. Yes, sir.

Q. Do you know where what is known as the receiving pens for the horse and mule market is located?

A. Yes, sir.

Q. Calling your attention specifically to that general location,

what do you think that property along there is worth per front foot?

A. About the same.

1063 Q. About $25 per front foot?

A. Yes, sir.

Q. A great deal larger price was paid for some of these lots than for others in the same locality. Would that make any difference, Mr. Marty?

A. The prices at which individual parties might hold them. Mr. Jones might hold one lot and Mr. Smith another lot.

Q. And one might hold his lot at five hundred and the other at a thousand dollars a foot?

A. Yes, sir.

Q. Which would properly register the value of the property?

A. I don't know. I should think generally the lower price.

Q. You think the lower price would more accurately determine the value?

A. Generally speaking; yes.

Q. Now, a great deal of this property which was bought by the stock yards company and for which very large prices were paid in Missouri along Bell street there had business-houses located upon it, and which were being operated for various kinds of business, such as saloons, stores, and so on; from their location and the close proximity to these large industries, the business would be very lucrative to them, would it not?

A. I don't think the experience of the people who have been in business there for the last few years would warrant that statement; no, sir.

Q. You don't think a hotel down there would be a very good investment?

A. I think the hotel immediately across from the stock yards would be an excellent investment, but I think a dozen hotels down there in that locality would be a very poor investment.

Q. That is true of any business, is it not?

A. Not generally; no, sir; it would be especially true there, though; one good hotel across from the stock-yards offices would be a very excellent investment.

Q. Now, when they bought out, we will say, that corner—if you were running a hotel in that location, and, as you claim, that would be a good location for such a business, a saloon and hotel business, and if I were to come along and buy it, no matter for what purpose, you would fix and determine its business value to you?

A. Ordinarily speaking, property is worth what it will pay five or six per cent. net upon.

Q. The revenue that it brings in?

A. Yes, sir.

1064 Q. When the stock yards company bought out that hotel for stock-yards purposes, they paid something more than for the naked value of the land?

A. I understood that they paid a good deal more than two hundred dollars a foot.

Q. I say that they must have paid for something outside of the value of the naked land, did they not?

A. I presume they did.

Q. Take a property that was bringing in a revenue of six thousand dollars a year, in a location of that character, where a man had a business worked up and had a business that was profitable, and he was to charge, we will say, four hundred dollars a foot. Could you give an estimate as to what he charged for his business and his building and his good will or whatever you may call it, as separated from the value of the naked land?

A. I suppose it could be figured on.

Q. Now, take that building off of that land and just leave the naked land; there is nothing there but the raw land, and there are several lots there that could be used for a hotel. Would those naked lots bring in anything like what the land would bring if the business was established on it and there was but one lot there which could be purchased?

A. Not generally speaking.

Q. Do you think there is any difference in the value of this land near the State line and this land here on the Kansas river?

A. Very little. Generally speaking, I think the land in Missouri, perhaps, would be a little preferable to that on the Kansas side, as far as values are concerned. I stated, however, that that property is very similar, so far as that goes. The taxes over here are rather less than in Kansas, but when it comes to those values I don't know that that makes much difference.

Q. Is the amount of taxes that property pays any guide to the value of the property?

A. It affects it to some little extent. I said just now that when property gets up to this value it doesn't usually cut very much figure.

Q. Why?

A. Simply from the fact that taxes are more apt to be low than when the property is of less value—that is, the more valuable is taxed about the same as the less valuable; the taxes are proportionately lower on the more valuable property.

1065 Q. You think it ought to pay more taxes than it does?

A. I don't know, but I say very often it is taxed less proportionately. For instance, property that is worth a hundred dollars a foot is taxed proportionately higher than property which is worth two hundred dollars a foot; I don't know that that is the case here; I don't know anything about the taxes whatever.

Q. But if you were a stranger to the situation one of the things that would guide you along the lines of the value of the property would — the amount of insurance that is carried, the amount of water tax, the amount of land tax, and so on; that would be a pretty fair way to gather the values?

A. Naturally all those things would have weight.

Q. They would not entirely control, but with other things?

A. They have a tendency to show what the property is worth.

Q. You do not know what this property is worth for stock-yards purposes, do you?

A. No; I don't, only what they have bought large tracts of it for. I should state also that when they were purchasing property down there and paying prices that you regard as exorbitant that none of the people who were selling knew that this company was purchasing.

Q. But they held up the prices all along with the expectation that the land would be needed for stock-yards purposes?

A. I think that very few of them had any idea that the stock yards company was purchasing it.

Q. Do you mean to say that the land we have been referring to and which you say *os* worth two hundred and fifty dollars a foot is not being held by people with the expectation of selling it to the railroads or to the stock yards?

A. No; I think very likely it is, but I say that at the time the company was making these purchases down there running from $125 to $600 a foot that very few of the people knew to whom that property would eventually go.

Q. There were some Boston agents down there who bought it?

A. Yes, sir.

Q. It was sold to them, and the people who sold it charged them just what they would have charged the stock yards company?

A. They bought it just as cheap as they possibly could.

Q. And the people, on the other hand, got just as much as they could?

A. Yes, sir.

1066 Q. You say they bought some large tracts of land?

A. I do not mean large individual tracts; I mean in the aggregate it is a large quantity.

Q. What do you refer to?

A. They must have bought quite a good many lots down there.

Q. They bought thirty or forty acres of land?

A. I presume so.

Q. They own forty acres on the Kansas side which is not a portion of this purchase that you referred to and they own a considerable tract on the west side?

A. I understand they do.

Q. And also on the north?

A. Yes, sir.

Q. These four or five little lots over here cost them more than their whole tract originally cost them?

A. I should not be surprised if that might be the case.

Q. And yet you attach to this whole tract the same value that those lots were purchased at; in fact, you attach a larger price?

A. I said that the value, the purchase price, of that property 20 years ago—I presume it was more than 20 years ago—is no criterion as to its value today; property that I could have bought then for seventy-five dollars an acre is now selling for a thousand dollars a foot.

Q. Suppose these stock yards were not there?

A. The very fact of the stock yards being there and being surrounded by the packing-houses has had a tendency to enhance the value of the property there very much.

Q. I understand that, but they have given us the value of their improvements, and we want to get at the value of the raw land.

A. I am not speaking of the improvements; I am speaking of the raw land.

Q. I am taking away the stock yards.

A. I don't see how you can do it.

Q. I can't do it by burning them down or anything of that kind, but I ask you if you can give us the value of this land for anything except stock-yards purposes.

A. If there was no Kansas City here, that land wouldn't be worth five dollars an acre.

Q. I say you don't know what it is worth for stock-yards purposes?

A. I think I do, from the fact that they would not have paid from $125 to $600 a foot for it unless they could make the money out of it.

1067 Q. Now, they own, we will say, 200 acres of land, upon which they have established and are doing a large business; it becomes essential for them to buy 20 or 30 adjoining lots; they own 200 acres of land already and have a large and lucrative business established; it becomes necessary in the development of their business for an outlet or for any other purpose—it is necessary for them to take in 20 or 30 additional lots. Now, you say that the price that they would have to pay for those additional lots is a fair criterion upon which to base the value of the balance of their property—the two hundred acres?

A. I beg your pardon. I didn't intend to convey that idea at all.

Q. What do you mean?

A. I said that the prices at which the ground had been purchased by the railroads ans the stock yards, and also for other business, was what I based the value of property on, and I also further said that I have been led to believe that there is anywhere from one to three railroads that are seeking entrance into Kansas City that I believed would be very glad to pay $250 a foot for that ground down there if they could get it.

Q. You are not prepared to say that the stock yards company could afford to pay fifty thousand dollars an acre for 82 acres of land to establish a stock yards there?

A. I have no idea about it, but I should not be very much surprised, from what I have understood they have realized from some of these yards in past seasons, that they could.

Q. You think, then, that the stock yards company could afford to pay $56,000 an acre for 82 acres of land for the purpose of establishing a stock yards down there?

A. $3,500 a foot seems an awful price to pay for ground at the corner of 10th and Main——

Q. I am not asking you that question. Will you please answer my question if you can. Could the stock yards company afford to

pay $56,000 an acre for land, for 82 acres of land, to establish a stock yards down there?

A. I have no idea what the stock yards company is making. I don't know anything about it. I will state, if you wish, that stockmen down there, a great many of them, are personal friends of mine, and a great many of them state that the stock yards are conducted better than almost any other stock yards in the country.

1068 Q. That is a little gratuitous statement that you are making for the benefit of the stock yards company?

A. No, sir.

Q. You have been brought here by the stock yards company to testify to the value of this land?

A. I don't know whether I have or not One of the counsel on the other side requested me to come up here and testify.

Q. Who was it?

A. Mr. Dana.

Q. Does he represent the stock yards company?

A. I presume he does. I don't know. I didn't ask him whether he did or not.

Q. You knew you were not testifying for me, did you not?

A. I should judge so from your questions.

Q. Don't you know, as a matter of fact, that the stock yards company was recording deeds right along from the parties that you claim simply purchased this land from the owners during the time that other lands were being acquired by private individuals in this last purchase?

A. No; I don't know that. I should not be surprised if that was the case.

Q. There would not be very much secrecy then?

A. I do know of some eight or ten or twelve parties down there who sold property down there, and one of them is a prominent attorney in the city here, and he told me that he did not know to whom he was selling.

By Mr. LITTLE: How far did you say it was from the Rex mill site, where land was worth twenty dollars a foot, to the land which was worth a thousand?

A. I should think it might be a mile and a quarter or a mile and a half. I should say about a mile and a half.

By Mr. HITE:

Q. You were inquired of in reference to the Rex mills. Will you please state to the special master what is the condition of the country with reference to railroads between the stock yards and the Rex mills. Are there any at the Rex mills?

A. There is one railroad, the Atchison, Topeka & Santa Fe, on the west of the Rex mills. I was unfortunate enough to own one of those pieces. I bought 5 acres, and when I sold it there

1069 was two and a half; the Kansas river had washed away half of it. My wife's father sold another piece similarly situated. The Rex mill people have gone to expense to protect their land. I

suppose they have paid twice the value of the land to build rip-rapping to preserve what they have got.

Q. Are there any railroad tracks between the stock yards and the Rex mills?

A. There is a belt-line railway from which the stock yards company handles a very large amount of stock that is brought in every day. I think some days as high as 70 train-loads of 12 or 13 cars each. It has been necessary to make it as good a railroad center as possible, and to have as many railroads as possible. Spurs have been put into the yards, and those companies which have no tracks are using the tracks of other companies.

By Mr. BOYLE:

Q. How far is the Rex mill tract from the terminal railroad that you spoke of?

A. Possibly half a mile; maybe more; I don't know.

Q. It may be less?

A. Well, it may be.

Q. How far is it from the Memphis?

A. I will state this: That that ground there has been held as high as fifteen thousand dollars an acre down there where the Rex mill is, and now there is ground there that I think can be bought for that immediately adjoining the Rex mill.

Q. And the Rex mill is held at how much per acre?

A. I don't know what it is held at an acre. I think I said it is worth from 20 to 30 dollars a foot.

Q. Has the Santa Fe put a switch in there?

A. Yes, sir.

Q. What other railroad is close to the Rex mill site?

A. None that I know of.

Q. Is not the Fort Scott & Memphis there?

A. That is nowhere near it.

Q. I mean their yards.

A. Their yards may be three-quarters of a mile away, and the Belt line is some distance away; I should — half a mile, maybe more. It is a considerable distance away.

Witness excused.

1070 R. M. GOODLET, a witness produced for the complainants, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to direct interrogatories propounded to him by D. R. Hite, Esq., counsel for the complainants, testified as follows, to wit:

Q. Where do you reside?

A. Kansas City.

Q. What is your business or occupation?

A. I am in the provision commission business.

Q. Did you at one time own some land in the vicinity of the Kansas City stock yards?

A. I did.

Q. Do you still own it?
A. No, sir.
Q. What did you do with those lots?
A. Sold them.
Q. Will you point out on this map to the special master the location of those lots with reference to the stock yards, as nearly as you can?
A. A lot on the northeast corner of Pacific avenue and Wood street, lying immediately west of the freight depot of the Maple Leaf Railroad Company, and five other lots in the same block facing on Wood street.
Q. Do you know what those lots were worth at the time you sold them?
A. I know what I got for them.
Q. Did you get what they were worth?
A. I think so.
Q. What did you get for them?
A. I got $30,000 for them.
—. How many feet were there?
A. 144.

Cross-interrogatories by Mr. LITTLE:

Q. How deep were they?
A. I don't remember; it has been some time since I sold them.
Q. 24-foot lots?
A. Yes, sir.
Q. When did you sell them?
A. In 1888.

Mr. Little moves to strike out the testimony of the witness as too remote.
Motion overruled.

1071 E. H. PHELPS, a witness produced by the complainants, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to direct interrogatories propounded to him by D. R. Hite, Esq., counsel for the complainants, testified as follows, to wit:

Q. Where do you reside?
A. Kansas City, Missouri.
Q. How old are you?
A. 57 years old.
Q. What is your business or occupation?
A. I have been in the real-estate business ever since I have been a resident of Kansas City.
Q. Have you conducted a real-estate business in Kansas City, Missouri, and Kansas City, Kansas?
A. Entirely in Kansas City, Missouri, and suburbs.
Q. Is it a part of your business to estimate the value of real estate?

A. Yes, sir; it has been very much of my business in the last two years.

Q. Have you ever been employed as a commissioner or appraiser in valuing real estate?

A. Yes, sir; I was one of the experts in the West Park terrace, and in the Penn valley, and I was one of the six commissioners to listen to the testimony and made a verdict in the case of the North Park terrace.

Q. Have your transactions in real estate been extensive in recent years, Mr. Phelps?

A. Why, reasonably so; my whole time is given to the business.

Q. Are you acquainted with the lands owned by the Kansas City Stock Yards Company?

A. Yes, sir; I am as well acquainted with them as with any other in the city.

Q. How long have you been acquainted with those lands?

A. From my very first entrance into the city; I was acquainted with them fully then as now.

Q. When was that?

A. Since 1882.

Q. Have you had frequent opportunities for seeing and knowing these lands?

A. Yes, sir; I have had occasion to see them very frequently, and have witnessed their growth during the years I have been here.

Q. Have transactions of sale and purchase of real estate in the vicinity of the stock yards come under your observation?

1072 *ity of the stock yards come under your observation?*

A. Yes, sir.

Q. As a part of your business?

A. Yes, sir.

Q. I will call your attention to the tract of land marked on this map by the letter A, lying east of the State line and west of Genesee street, and comprising about 42 acres, and will ask you to state to the special master if you know the value of that piece of land.

A. Yes, sir.

Q. State what, in your opinion, that tract of land is worth at the present time, exclusive of any improvements.

A. Sixty thousand dollars an acre for the whole 42 acres; that includes the subdivisions which seem to be marked on the map.

Q. I call your attention to a tract of land designated on the map by the letter B, lying west of the Kansas State line, ans comprising about 40 acres, and will ask you to state if you are acquainted with the present value of that land.

A. Yes, sir; I am.

Q. Please state what, in your opinion, is the present actual value of that land, exclusive of the improvements upon it.

A. Fifty-five thousand dollars an acre; really worth just as much as this, but a little more expensive to take care of along the river, and that would make a difference of five thousand dollars an acre.

Q. I call your attention to a piece of land designated on the map by the letter E, comprising about 25 acres, and known as the north

yards of the Kansas City Stock Yards Company, and lying north of the tracks of the Union Pacific and Missouri Pacific Railway Companies. Please state to the special master if you are acquainted with the value of that land, excluding from your consideration that portion of it which lies west of Water street.

A. I am.

Q. Please state what, in your opinion, that land is worth at the present time, exclusive of improvements and structures thereon.

A. That ground is worth forty thousand dollars an acre.

Q. You refer to the high land?

A. Yes, sir.

Q. Please note on the map the small tracts marked with small *e*, and state to the master if you are acquainted with the value of that land.

A. Yes, sir; I am acquainted with it.

1073 Q. Please state to the special master what, in your judgment, that land is worth at the present time, exclusive of any improvements or structures.

A. I should put it at $40,000 an acre.

Q. Please note on the map a small tract cut by James street, comprising one and a fraction acres, lying east of the land about which you have just testified and east of the terminals of the Kansas City & Northwestern Railway Company. State if you are acquainted with the value of that land.

A. Yes, sir.

Q. What, in your opinion, is it worth at the present time, exclusive of any improvements or structures thereon?

A. The ground is worth the same, at the rate of forty thousand dollars an acre.

Q. Please note the tract marked on the map by the letter C, lying west of the Kansas river and comprising nearly 15 acres. Please state if you are acquainted with the value of that land.

A. Yes, sir; I think I am fairly so.

Q. Please state what, in your opinion, it is worth at the present time, exclusive of improvements.

A. I should put that ground at sixteen thousand dollars an acre.

Q. I will now call your attention to the tract marked on the map by the letter D, lying west of the Kansas river and north of the tract about which you have just testified, and as*k* you to state if you are acquainted with the value of that tract of land.

A. Yes, sir; I know that very well.

Q. Please state what, in your opinion, it is worth at the present time, exclusive of all improvements and structures thereon.

A. That is worth ten thousand dollars an acre in its present condition.

Q. Now, returning to the tract marked E, I call your attention to that portion of the tract lying west of the 25 acres about which you have testified, which is on the east bank of the Kansas river, and will ask you to state what, in your judgment, that land is worth per acre at the present time.

A. Well, I think I could safely put that at $20,000 an acre. That

only half of this. It is really worth more, but it is well worth
at. It is the river front.

Q. What elements enter into the judgments which you
974 have expressed respecting the values of lands in the bottoms?

A. The character of the business there, the uses to which
at ground can be put, the limited supply of it, the terminal facil-
ies that it affords to the railroad companies; they cannot get up on
e hill here.

975 And in answer to cross-interrogatories propounded to him by Mr. Boyle, attorney general, the witness testified as fol-
ows, to wit:

Q. Were you present when Mr. Marty testified?

A. I was here at the closing part of his testimony. That was the
rst I ever heard of the case.

Q. Are you familiar with the Rex mill site?

A. No; I don't know much about it. I know where it is lo-
ated—its location.

Q. What is land worth there an acre?

A. I don't think I would like to price that without going and
ooking at it.

Q. You know its general business location?

A. It is worth from thirty to forty thousand dollars an acre. It
rough there.

Q. That is about a half or three-quarters of a mile from the stock
ards?

A. Yes; it is a trifle over three-quarters of a mile from the south
ne.

Q. You think it is worth thirty or forty thousand dollars an
cre?

A. More or less.

Q. Of course, that is rather indefinite.

A. I would not want to price the ground without seeing it.

Q. On the theory it is level land?

A. It is safe in saying it is *wort* worth twe*h*ty or thirty thousand
ollars an acre. I could fix my opinion definitely by looking at it.

Q. Take the hypothesis that there is no great expense necessary
o get the land in shape, such as riprapping or anything of that
ind, what would you think it would be worth for a business loca-
on such as these other enterprises have here?

A. This location is not so favorable.

Q. Therefore you put it lower?

A. I should put it considerably lower.

Q. You would put it at twenty or thirty thousand dollars an
cre?

A. I think they have been to considerable expense to make the
ver front.

Q. Are you familiar with the stock-yards business?

A. Not the business itself: only what I know by general report.

Q. You don't know what they could afford to pay for land for the
urpose of conducting and carrying on their business?

A. No; only as I judge from the prices they have paid.

1076 Q. You don't know, therefore, what they can afford to buy property for, do you?

A. I think they are in pretty good shape. I don't know their business; I am not a stockman at all.

Q. I then say you don't know what they can afford to buy property for?

A. I don't know what they are obliged to buy.

Q. Mr. Hite has asked you to value this land on the theory that there are no improvements on it—that is to say, he wishes to eliminate those improvements. I would ask you, therefore, to give me your best judgment, taking this 80 acres of land down here and this 25 acres of land in the north yards and the 7 acres of land that is described as north of the quarantine yards, and, as he suggests, remove these improvements.

By Mr. HITE: I beg your pardon. I made no such suggestion.

Q. Well, I suggest it. Take those improvements away from the land and value this naked land. Do you understand my question, Mr. Phelps?

A. I will when you finish it.

Q. Take away these improvements.

A. Yes.

Q. Pens, buildings, and everything.

A. Wipe it all off?

Q. Yes; wipe it off the map, tracks and all.

By Judge HORTON: Do you mean to wipe out the whole city?

Q. I did not say that. I mean the improvements on the stock-yards lands.

A. Just the stock yards lands? Wipe off the improvements?

Q. Yes.

A. I would average them about forty thousand dollars an acre.

Q. Why?

A. Because it would be worth it.

Q. To whom?

A. To anybody who wanted to come into a great metropolis for railroad terminals or wholesale houses. I presume you don't wipe out the railroads?

Q. No; they have got their terminals there, and they may get some more.

A. Yes; they will get more; they will need more.

Q. More than they can get in 140 acres?

A. If you wipe out the stock yards, that would furnish a great deal of terminal land.

Q. Would it be worth that much for terminal land?

A. I believe it would; yes, sir. This city is going to have 500,000 people in 15 or 20 years.

1077 Q. You say, then, that all of this property would be worth forty thousand dollars under those circumstances?

A. Yes, sir; I do.

Q. This property over here would be worth just as much across the river?

A. I did not say that.

Q. What do you think this would be worth in the quarantine yards?

A. It is worth sixteen thousand dollars an acre.

Q. Take away the stock yards and value it as raw land.

A. I believe I would give sixteen thousand dollars for it.

Q. For what purposes?

A. Wholesale houses, etc.

Q. How do you know it would be occupied for that purpose?

A. My experience shows that. I will answer that further. I know it would be, because it is so adjacent to this great city—this city of 150,000 people. It is within ten minutes' drive, and it ought to be worth fifteen thousand dollars an acre.

Q. You think it would be filled up with these enterprises?

A. It must be, and any thinking man will see it, with all these other industries around there. Even if there were no industries in the whole bottom with this city here I believe that ground is worth the money, and a man would be exercising good sense, if he had the money, to buy the whole shooting match in the west bottoms at that figure.

Q. Why do you put it at that figure—fifteen thousand dollars?

A. I have told you.

Q. Why do you put $55,000 on B and $60,000 on A? Why did you put that value on the raw land, without improvements, according to the answer you gave to the gentleman on direct examination?

A. Really B is worth as much as A. It costs a little more to maintain it and it ought to be worth a little more; it is on the river front, and the offal can be thrown right into the river.

Q. You think that would be worth five thousand dollars an acre?

A. I say it ought to be, but it costs more to keep that property up.

Q. Why do you say this land would be worth forty thousand dollers an acre if the stock yards were away from there and then say it is worth fifty-five and sixty thousand dollars an acre?

A. My estimate was forty thousand dollars an acre for the
1078 whole thing, the more valuable and the less valuable. I understand your question to apply to the whole tract.

Q. I asked you to eliminate the improvements.

A. Yes.

Q. What value do you put on the main yards?

A. That is the yards on which I fixed the price in my direct examination of fifty-five and sixty thousand dollars.

Q. And with the yards away from there you value the land in the main yards at fifty and sixty thousand dollars relatively?

A. Yes; I would.

Q. You think they ought to be worth that much for railroad terminals and things of that kind?

A. Yes; I do; of course, it is hard to get it out of your head that it would be a great place for a stock yards, with the experience we

have had with these stock yards and with my knowledge of what they have done. If they were not there, it would be a good investment to put yards there.

Q. How do you know they could afford to pay fifty or sixty thousand dollars an acre for land?

A. I know by my observation as a business man; that is all. I expected you would ask me what I based my judgment on; it comes back to the original answer. Your judgment is based on your opinion; your opinion is made up from your knowledge of things.

Q. You haven't any opinion about stock yards?

A. I am speaking of the ground upon which it is built.

Q. But you don't know whether the stock yards company could afford to pay fifty-five or sixty thousand dollars an acre for land, do you?

A. My judgment is they could.

Q. Why?

A. From observation and general knowledge; my opinion is based on judgment and observation.

Q. What observation have you had of these stock yards down there?

A. I have very close observation; I have known them very closely from the first minute I lit here.

Q. When was that?

A. In the spring of 1882. In fact, I was hired at fifty dollars a month and sold land in Armourdale for F. J. Baird & Co. in 1882; I worked for them about a year.

Q. You have seen the growth of these stock yards?

A. Yes, sir; since that time.

Q. Well, of course, they only paid a nominal price for a
1079 great quantity of this land down there.

A. That was their good luck; I presume they did buy it at lower prices than these last purchases. I know this last purchase was very extensive; I sold one or two pieces; we didn't get as much as others; we didn't know what it was being bought for.

Q. You think if all this tract of land down there was unoccupied you think the stock yards company could go in there and buy all of this tract of land for fifty or sixty thousand dollars an acre, as the case might be?

A. From forty to sixty.

Q. For stock-yards purposes?

A. My observation would lead me to answer yes, from the way this company has been prospering and from its management. I presume they are good business men; they seem to be.

Q. You don't really know that they could afford to pay that price for that land, as a matter of fact?

A. I couldn't answer that any more than I believe they could; my observation and my judgment is they could. I would be glad to take a hand in the business and take my chances on getting the money out of it if I had it. They have strong resources behind

them, and they have done your State an abundance of good. I speak this as a citizen and not as a partisan.

By Judge HORTON:

Q. When you speak of the prices of this land you take into consideration the great industries surrounding it, do you?

A. Oh, yes; all those things I consider. If those things were out, it would be different. If all the stock yards and packing-houses and railroads were wiped out, it would be simply farm land.

Witness excused.

Adjourned to 9.30 a. m., Friday, May 21st, 1897.

1080 M. E. BURNETT, a witness produced by the complainants, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to direct interrogatories propounded to him by D. R. Hite, Esq., counsel for the complainants, testified as follows, to wit:

Q. Where do you reside?

A. Kansas City, Missouri.

Q. Whereabouts in Kansas City do you reside?

A. 119 Agnes avenue.

Q. Where is your place of business, Mr. Burnett?

A. 14th and Wyoming.

Q. How long have you been doing business there?

A. Three or four years.

Q. Do you own the property where you do business?

A. Yes, sir.

Q. How long have you owned that property?

A. Since about 1880.

Q. Are you acquainted with the value of real estate in that vicinity?

A. Well, I am somewhat; I have sold some.

Q. Do you know of any sales or purchases of real estate in and about that vicinity?

A. Yes, sir.

Q. From the information that you possess, are you able to form a judgment as to the value of real estate in that vicinity?

A. Well, I sold a piece to the stock yards company.

Q. Wait a minute; answer the question, please.

A. Yes, sir.

Q. Do you know the property that belongs to the Kansas City Stock Yards Company lying east of the Missouri and Kansas State line and west of Genesee street?

A. Yes, sir.

Q. How long have you known that property?

A. Probably 20 or 25 years.

Q. Did you know of that property before it was purchased by the stock yards company?

A. Yes, sir.

Q. Do you know anything about the circumstances attending the purchase of it by the stock yards company or any part of it?

A. I remember the agents buying it up.

Q. You knew of the transactions at the time?

A. I didn't know who was buying it at the time; I didn't know it was the stock yards company at the time.

Q. How was that bought; in the name of other people?

A. In the name of other people; I supposed it was for the railroad companies.

1081 Q. Do you know of any sales that have been made in that vicinity to the railroad companies?

A. Yes, sir.

Q. Do you know of any condemnations that have been made by railroad companies in that vicinity?

A. Yes, sir.

Q. Do you know the prices that were assessed for the land by the condemnation commissioners?

A. $250 a foot.

Q. You do know of the fact of how much it was?

A. Yes, sir.

Q. I will ask you to state what, in your judgment, the property of the stock yards company which I have described is worth per front foot, or per acre, or any other way that you want to describe it, at the present time.

A. Why, I would put a value on it of $250 per front foot.

And in answer to cross-interrogatories propounded to him by Attorney General Boyle, the witness testified as follows, to wit:

Q. You say you own property on Wyoming street?

A. Yes, sir.

Q. Wyoming and 14th streets?

A. Yes, sir.

Q. How close is that to the stock-yards property?

A. Well, the front lot is probably about 3,000 feet from the stock yards.

Q. The back part of your lot is closer still?

A. Yes, sir; on the alley.

Q. Of course you people expect the stock yards to flow over there and take in your property?

A. Either the stock yards, the railroads, or the wholesale houses.

Q. More wholesale houses liable to be located on that tract?

A. Yes, sir.

Q. You hold that at $250 per front foot?

A. No; I hold it at more.

Q. How much?

A. Well, I have got a very fine building; I hold it at eighteen or twenty thousand dollars.

Q. What business have you got in that building?

A. There is a meat business in the building, a drug store, and boarding-house.

Q. Do you live in the building?

A. No, sir.
Q. Where do you live?
A. I live out on the east side.
Q. What rent do you get from that building?
A. At the present time I get about $85.00 a month.
Q. Got more a little while back?
A. Yes, sir.
1082 Q. Times are hard?
A. Yes, sir.
Q. Rents have gone down?
A. The place is not a pleasant place to live in, as it has been in the past.
Q. What is this land worth per acre?
A. I don't know. I haven't paid any attention to the question of acres.
Q. That is all.

And in answer to redirect interrogatories propounded to him by Mr. Hite, counsel for the complainants, the witness testified as follows, to wit:

Q. When you speak of property being worth $250 per front foot, what do you mean, one foot front by the depth of the lot?
A. Yes, sir.
Q. How deep would that be?
A. About 124 or 125, I think, those lots run.
Q. Do you know how many of those lots are usually estimated in an acre?
A. I think there is something like eight or ten.

Witness excused.

1083 THOMAS J. HINTON, a witness produced by the complainants, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to direct interrogatories propounded to him by D. R. Hite, Esq., counsel for the complainants, testified as follows, to wit:

Q. Where do you reside?
A. Kansas City, Kansas.
Q. Do you own any property in the vicinity of the stock yards?
A. Yes.
Q. Did you ever sell any property in the vicinity of the stock yards?
A. No; I haven't sold any.
Q. Do you know of any sales of real estate that have taken place in the vicinity of the stock yards in recent years?
A. Yes, sir.
Q. Are you acquainted with the lands in and about the stock yards?
A. Somewhat; yes, sir.
Q. How long have you known that land?
A. Fourteen years.

Q. Have you had many opportunities for seeing the land?
A. Yes, sir.
Q. Are you acquainted with the values of lands in the vicinity of the stock yards?
A. Somewhat; yes, sir.
Q. Please point out on the map, as nearly as you can, the location of the property that you own in the vicinity of the stock yards.
A. Between Central avenue and the north yards on First and Second streets.
Q. Please state to the special master what, in your judgment, property in the vicinity of the stock yards and in the neighborhood where you own property is worth.
A. $200 to $250 per front foot.
Q. What depth would that be?
A. 120 feet.
Q. Are you acquainted with the value of the lands shown by the letter E on this map and now used by the stock yards company for its north yards?
A. Yes, sir.
Q. Please state to the special master what, in your judgment, is the present actual value of the lands of the stock yards company designated by the letter E, being its north yards?

By Judge MARTIN: Do you include the accretions?
By Mr. HITE: No.

A. Do you mean per acre?
Q. Yes.
A. I should say $50,000 or $60,000 an acre.
1084 Q. What, in your judgment, Mr. Hinton, is the property that you now own between Central avenue and the stock yards worth?
A. I think it is worth $200 to $250 per front foot.
Q. Are you acquainted with the value of the property that is now owned, used, and occupied by the Maple Leaf and Northwestern Railroad Companies?
A. Yes, sir.
Q. What, in your opinion, is the present value of that property?

Question objected to and withdrawn.

Q. Are you acquainted with the value of the property owned by the stock yards company lying east of the State line and west of Gen-see street?
A. I am not much acquainted with it, but I know the prices that they paid.
Q. From the information that you possess, are you able at this time to state the value of that property?
A. Yes, sir; I think that property is worth——
Q. Please state to the special master what, in your judgment, it is *wort* worth at the present time.
A I think that property is worth $300 a foot.

Q. What do you think it is worth per acre?
A. $60,000 to $70,000 an acre.

1085 And in answer to cross-interrogatories propounded to him by L. C. Boyle, attorney general, the witness testified as follows, to wit:

Q. You own some lots in here, Mr. Hinton?
A. Yes, sir.
Q. That is, north of the north yards?
A. Yes, sir.
Q. How long have you owned them?
A. About 14 years.
Q. What are they used for?
A. Tenements.
Q. How much rent do you get from them?
A. Rents are small.
Q. How much do you get?
A. Six and eight dollars a month.
Q. You have owned them for eight or ten years?
A. Yes, sir.
Q. There does not seem to be a very great demand for your lots?
A. Well, I could have sold those lots some time ago.
Q. For $225?
A. $250.
Q. Per front foot?
A. Yes, sir.
Q. All of the lots?
A. No; not all of them.
Q. The corner lots you hold at higher prices than you do the lots in the middle of the block?
A. Yes, sir.
Q. That is because of the superior location of the corners?
A. Yes, sir.
Q. How many lots have you there?
A. Four and a half.
Q. 25-foot lots?
A. No; 24.
Q. At what do you hold the inside lots?
A. $200 per front foot.
Q. You have owned them for eight or ten years?
A. Yes.
Q. And you get eight dollars a month?
A. I have got more houses than that; I have drawn $114 a month out of my eight houses.
Q. What do you get now?
A. About $60 a month.
Q. Rents have fallen down there?
A. Yes, sir.
Q. Times are hard?
A. No; that is not it; this property is going into business property and respectable tenants are moving away.

Q. You say that property is worth two hundred to two hundred and fifty dollars a foot?
A. I wouldn't take less than that.
Q. Why don't you sell it?
A. I am not in any of a hurry to sell it.
Q. Could you get an opportunity of selling it?
A. Not just now.
Q. How much did you pay for those lots?
A. I bought them fourteen years ago, when property was cheap.
1086 Q. How much did you pay?
A. Eighteen hundred dollars for one piece and ten hundred and fifty for the other.
Q. You paid $2,850 for the four lots and a half?
A. Yes, sir.
Q. Property has not fluctuated any in value there in the last eight or ten years, has it?
A. Yes, sir.

And in answer to redirect interrogatories propounded to him by D. R. Hite, counsel for the complainants, the witness testified as follows, to wit:

Q. You were asked whether property had fluctuated in the last eight or ten years.
A. Yes, sir; it has; it went up in value.
Q. You have testified to the amount you paid. Has the fluctuation been up or down?
A. Up.
Q. Has it been a steadily increasing value?
A. Yes, sir.
Q. What elements do you include in making up your judgment as to the value of land down there, Mr. Hinton?
A. The demands for it; lands are scarce there; very scarce.
Q. What is the demand for it—for what enterprise?
A. Stock yards, railroads, implement-houses, warehouses.
Q. Anything else?
A. That is all I think of.
Q. Since you have owned your land down there has there been a steady demand for the purposes concerning which you have testified?
A. Yes, sir.
Q. Do you know of any sales in the vicinity of where you own property in response to the demands by these industries?
A. Yes, sir.
Q. What were the prices obtained?
A. $200 to $250. The property right in front of my property brought from $200 to $250 per front foot.
Q. Who was the purchaser in that case?
A. The Maple Leaf Railway Company.
Q. Do you know of any other purchase by any other railway company in the same vicinity?

A. Yes, sir; the Northwestern bought in there; they didn't pay quite so much money for it.

Q. About how much did they pay?

A. I think they paid about $100 to $125 per foot.

1087 Q. Did the Northwestern buy in there before the Maple Leaf?

A. Yes, sir.

Q. From your knowledge of the conditions in the vicinity, concerning which you have testified, Mr. Hinton, I will ask you if there is any property that you know of for sale down there for less than the prices you named.

A. There is some property around there that you can buy cheaper; people who have to sell who can't hold it.

Q. Is there any considerable quantity of that?

A. No, sir.

Q. Would any person desiring to purchase two or three acres down there be able to buy it, in your judgment, within the figure you have named?

A. I think they would have to pay more.

Q. That would be, I believe you said, for railroad purposes?

A. Yes.

Q. Any other purposes?

A. Warehouses.

Q. Any person who wanted to buy a large tract of land would have to pay a large sum of money for it?

A. Yes, sir.

Q. You said that since you have lived there there had been a steady demand for that character of property by these enterprises in and about that vicinity?

A. Yes, sir.

By Mr. BOYLE:

Q. Then if there were 100 or 150 acres of land lying vacant down there and a person wanted to secure an acre or two out of it he would have to pay these same prices?

A. I think if there was plenty of land it would not be so high in value.

Q. When you say plenty you refer to 100 or 150 acres?

A. Yes, sir.

Q. You place your land over here a very little lower than *than* this land over here on the Missouri line?

A. Yes, sir.

Q. You own property over north of the yards?

A. Yes, sir.

Q. The Maple Leaf, you say, paid $200 to $250 a foot; when did they buy it?

A. Seven or eight years ago.

Q. Wasn't it a little longer than that?

A. I don't know; maybe it was not that long ago.

Q. It was not during the boom times that they bought their property?

A. We never had any boom there.
Q. Property has never been valued at boom prices in there?
A. No, sir.

1088 By Mr. HITE:

Q. You say that the Northwestern had purchased property through there; do you remember of their purchasing much property?
A. I think they condemned it.

By Mr. BOYLE:

Q. When they condemned it they got it cheaper?
A. People didn't know it was going to be taken.
Q. When the public appraisers came through——
A. They didn't let the people know anything about it.
Q. They didn't have the opportunity of putting prices on it?
A. No; we didn't have the option.
Q. So that these public appraisers who fixed the value of the property fixed it lower than you gentlemen who owned the property?
A. Yes, sir.

By Mr. HITE:

Q. Was that generally so?
A. Yes, sir; that was generally so in the case of the Northwestern.

Witness excused.

1089 C. W. SCHILLER, a witness produced by the complainants, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to direct interrogatories propounded to him by D. R. Hite, Esq., counsel for the complainants, testified as follows, to wit:

Q. Do you live in Kansas City?
A. Kansas City, Kansas.
Q. Do you own any property in the vicinity of the Kansas City stock yards?
A. Interested in it; yes, sir.
Q. Are you acquainted with the land belonging to the company?
A. In Kansas; yes.
Q. How long have you been acquainted with that land?
A. Since 1878.
Q. Have you had frequent opportunities for seeing it?
A. Yes, sir.
Q. Point out on the map, Mr. Schiller, the location of the property in the vicinity of the Kansas City stock yards in which you are interested.
A. We have four lots right in there.
Q. You say you have four lots west of Wood street and between Central avenue and the stock yards?
A. Yes, sir.

Q. Are you acquainted with the values of property in the vicinity of the lots which you own?

A. Somewhat; yes, sir.

Q. Are you interested in any other property in the vicinity of the stock yards, Mr. Schiller?

A. Yes, sir.

Q. Will you please point out where that property is located?

A. On that corner.

Q. You mean on the corner of Wood street and Central avenue?

A. Yes; two and a half lots on the southwest corner.

Q. Have you got any other property in that vicinity?

A. Yes, sir.

Q. Where is that?

A. Here.

Q. On Ewing street and Bunker avenue?

A. Yes; we have six lots.

Q. That would be the northwest corner, would it not?

A. Yes; I think that is right.

Q. Do you know the value of the property in which you are interested; are you acquainted with its value?

A. I have an idea what it is worth; yes, sir.

1090 Q. From such information as you possess concerning the values of property down there are you able to state the present value of property in that vicinity?

A. Yes, sir.

Q. Are you acquainted with the value of the property designated on this map by the letter E and known as the north yards of the stock yards company?

A. Yes, sir.

Q. Are you acquainted with the value of this property, excluding that which lies west of Water street, from the information that you possess?

A. Yes, sir.

Q. Please state to the special master what, in your judgment, the present actual value of that property is.

A. Per acre or per foot?

Q. Per acre.

A. Well, I should say from $45,000 to $50,000 an acre.

Q. Are you acquainted with the value of the property designated on this map by the letter B, being that part of the main yards of the Kansas City Stock Yards Company lying in the State of Kansas, and east of the Kansas river?

A. No, sir; I am not much familiar with that.

1091 And in answer to cross-interrogatories propounded to him by L. C. Boyle, attorney general, the witness testified as follows, to wit:

Q. You get the value that you put upon this property designated as E, a portion of it, from the prices at which you hold your own property that you own—that is, in the immediate vicinity of that part—per front foot?

A. Yes, sir.

Q. You value it per acre the same as you value your own land per front foot?

A. Yes, sir.

Q. How long have you owned that property over there?

A. About 7 years—that is, this strip in here, and this over here we have owned several years.

Q. You own this property?

A. Yes, sir.

Q. That is north of the north yards of the stock yards company, and have owned it seven years?

A. Yes, sir.

Q. What is your business, Mr. Schiller?

A. I am working at the packing-house.

Q. What packing-house?

A. The Armour Packing Company.

Q. Is this property in your name?

A. It is in the name of an estate. I am just interested in it.

Q. As one of the heirs?

A. Yes, sir.

Q. It belonged to your father and mother?

A. It belonged to my wife's father.

Q. How long did he own it before he died?

A. About seven years. He has been dead three years.

Q. Whom did he buy it from?

A. He bought it from K. B. Armour—that is, the strip in here. That strip in there was bought from the Baptist church—that is, four inside lots were bought from Mr. Armour, and 48 x 60 — was bought from the Baptist church.

—. Where is that?

A. On the corner of Central avenue and Wood street.

Q. At what do you hold the 48 by 60 tract?

A. $200 per front foot.

Q. That is a corner lot?

A. Yes, sir.

Q. What do you hold those inside lots at?

A. $200.

Q. Got some land there?

A. Yes, sir.

1092 Q. How many lots have you there?

A. Four.

Q. Who is K. B. Armour?

A. He is a member of the Armour Packing Company.

Q. This other land down here near Bunker and Ewing street, how long has that been owned by this estate?

A. I should think about 16 or 17 years.

Q. What do you hold that at?

A. That is $200.

Q. What did you pay for that, do you —?

A. I don't know. I know what they paid for this strip in here.

Q. You don't know what they paid for that strip down on Ewing street?
A. No, sir.
Q. What is on that strip of land on the corner of Bunker and Ewing streets?
A. Some tenement-houses.
Q. What do you get a month for them?
A. About $50 a month.
Q. How many houses have you there?
A. Five.
Q. That is not a very good return on that kind of an investment of $200 per front foot?
A. We did not pay $200 per front foot.
Q. How many houses have you up here?
A. I have *twn*.
Q. I refer to the land that is north of the north yards.
A. Yes, sir.
Q. In the immediate vicinity of the pieces marked *e*, owned by the stock yards company, what rents do you get from those?
A. Get $75 per month.
Q. How many houses?
A. Ten.
Q. You get $75 a month for the bunch?
A. $75 to $80.
Q. You value these north yards at the same rate per foot that you value these lots here?
A. About that; yes, sir.
Q. Is there any difference?
A. No; I said $45,000 to $50,000 an acre.

And in answer to redirect interrogatories propounded to him by Mr. Hite, counsel for the complainants, the witness testified as follows, to wit:

Q. You were inquired of by the attorney general in reference to property that you own. Now, do you know of any actual sales that have taken place in that vicinity?
A. Yes, sir.
Q. Please state to the special master what sales have taken
1093 place in recent years. State such instances of sales as have come under your personal observation of lots in that vicinity and the prices.
A. Well, four lots that we own on Wood street. We had six directly opposite, and they brought two hundred dollars a foot; and then we owned two lots and a half at the corner of 7th and First streets; they brought two hundred and fifty a foot.
Q. Any others?
A. Oh, yes; I could cite some more in there. I don't know exactly who the parties were, but they brought at the rate of $200 a foot for inside lots and $250 for the corners.
Q. Were you interested in any other lots than you have mentioned, lying north of the stock yards?

A. No, sir.

Q. For what purpose was that property purchased and used?

A. Railroads.

Q. What railroads?

A. The Maple Leaf; we sold directly to the Maple Leaf.

Q. Do you know of any other sales that were made to the Maple Leaf than those you have mentioned?

A. I know of all that property in there that was sold to the Maple Leaf.

Q. You did know of your own knowledge at the time it occurred?

A. Yes.

Q. What prices were paid by the Maple Leaf for that property?

A. Two hundred dollars a foot for inside lots.

Q. Do you know of any cases where they paid any more?

A. I have been told that they paid four hundred dollars a foot for the lot on the corner of First street and Central avenue, where the passenger depot now stands. Of course, I don't know that for certain.

Q. Do you know of any sales that were made for less than the figures you have named?

A. To the Maple Leaf?

Q. Yes.

A. No, sir.

Q. Mr. Schiller, for what purposes is that land in the vicinity, about which you have been testifying, valuable?

A. Well, such as railroads, stock yards, warehouses, packing-houses, if they can get enough of it.

Q. If a man went in there to buy an acre or two, would he be able to buy it at the figures you have named, do you think?

A. I hardly think so.

Q. Would he — able to buy it for any less?

A. No, sir; I think it would cost more, if a man had an acre or two to get there.

1094 Q. Since you have resided in that vicinity have there been any considerable purchases of land at any figures less than you have named?

A. No, sir; not direct purchases that I know of, unless it was parties that owned a little strip of land, probably one lot or so, that — had to sell, which was sometimes the case, and they took less.

Q. Then, as I understand it, it is your opinion that if a person went in there to get a considerable tract of land he could not get it for less?

A. I don't think so; no, sir.

By Mr. LITTLE: What did I understand you to say the north *years* were worth per acre?

A. From $45,000 to $50,000 an acre.

Q. If it should appear that the income of the stock yards company derived from that north yard was only two per cent. on $45,000, would you still consider that property worth $50,000 an acre?

A. Well, I don't know; I haven't given it any thought.

Q. Well, think about it a minute and tell me; you are an expert in this business.

A. No; I am not an expert.

Q. What would be your judgment?

A. Well, I don't know what to say, I am sure.

Q. Then the income derived from a property does not assist you in arriving at the value of the property?

A. Where I reach my conclusions is from the demands.

Q. I am asking you this question: The income derived from any given property does not assist you in reaching a conclusion as to the value of the property; of course, it is your privilege to form your opinion as you please; I am just asking you if the income derived from property affect your judgment in arriving at the value of the property.

A. Not in this particular instance.

By Mr. HITE:

Q. You said in respe-se to a question by Mr. Little that it was the demand for property that put the value on it?

A. In this instance, yes.

Q. What demand is there down there for land in that vicinity?

A. Well, there is calls from the packing-houses, from the railroads and different business people.

1095 Q. Enterprises that are seeking locations there?

A. Yes, sir.

By Mr. LITTLE:

Q. Who made the last demand for land down there?

A. I couldn't say.

Q. You don't know of anybody who has made any demand for land down there?

A. Any corporation?

Q. Anybody.

A. Yes, sir; I do.

Q. Who was it?

A. The last man who made a demand for property down there—looked for it—was—why, I can't call his name just now; he is a real-estate man in Kansas City, Kansas, who came to me.

Q. What did he want with the land?

A. I did not ask him.

Q. Did he make you an offer?

A. He asked me what my prices were.

Q. A real-estate man asked you what your prices were?

A. Yes, sir.

Q. He didn't want to buy land for himself, did he?

A. I hardly think so.

Q. You don't know whether he wanted to buy it for anybody else or not?

A. No, sir.

Q. Didn't he want to put it on his list and sell it?

A. No, sir.

Q. Is that the only demand you know of for land down there?
A. No, sir; we could have sold our Ewing Street property for $225 a foot.
Q. When?
A. Six years ago.
Q. Do you know of any demand for it since?
A. The time that the Doyle cracker factory burned down somebody was sent out to find out what the price was on the land.
Q. Whom did they send?
A. Real-estate men.
Q. How do you know?
A. I asked.
Q. What price did you put on it?
A. $250 a foot.
Q. Did they buy it?
A. No, sir.
Q. Didn't think it was worth it?
A. We didn't care about selling it particularly at that time.
Q. You would have sold it for $250?
A. Yes, sir; that was our price.
Q. Do you know of any other demand in the last six years for property down there?
A. Yes; the packing-houses bought some property down there.
1096 Q. How close to you?
A. Within about two blocks.
Q. That is the nearest to you, was it?
A. Yes, sir.
Q. Don't know any nearer than that in the last six years—when was that?
A. Within the last year.
Q. You know of three instances, and that is all in six years?
A. No; I don't say in six years.
Q. Do you know of any more?
A. No, sir.
Q. And in two of those cases you named a price which they declined to pay. Am I correct?
A. No, sir.
Q. Where is my mistake?
A. In one only.
Q. They refused to pay it?
A. Yes, sir.
Q. Did you make prices to the real-estate agent?
A. Yes, sir.
Q. Then you made two prices, did you not?
A. Yes, sir.
Q. Didn't he decline to take it?
A. I never saw him afterwards.
Q. He didn't take it, then, did he?
A. No, sir.

Q. Now, do you know of any other requests for property besides these three, sir?

A. No, sir.

Q. Are they not the demands upon which you based your value? You said *you said* you based it upon the demand for property down there. Are those the demands?

A. No, sir.

Q. What else, if those are not the demands—what else were you talking about? You say that the demands fix the value?

A. Yes, sir.

Q. And you are able to cite only three instances, and in two of them they refused to pay the price you offered?

A. Yes, sir.

Q. I ask you if there are any other demands.

A. There may not be at the present time, but the expectations are that there will be.

Q. You expect there will be a demand?

A. Yes, sir.

Q. And you base your valuations, not upon the present demand, but upon the demand you expect there will be?

A. You take in certain surroundings, and a man can form an opinion.

Q. I ask you this plain question: Do you base your judgment as to the valuation of this property on the demand there, or on the demand that you expect there will be?

A. On both.

1097 Q. Then is there any other present demand than those you have stated?

A. Not now.

Q. Then those three demands which you have stated form the basis of your judgment as to the value of the property?

A. Partly; yes, sir.

Q. Well, that ought to lead you gentlemen who are holding your property down there at those prices to think you are demanding more for it than it is worth?

A. No, sir.

Q. It wouldn't have that effect?

A. No, sir.

Witness excused.

1098 W. W. ATKIN, a witness produced by the complainants, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to direct interrogatories propounded to him by D. R. Hite, counsel for the complainants, testified as follows, to wit:

Q. State your name and residence.

A. W. W. Atkin; I reside at 350 Waverley avenue, Kansas City, Kansas.

Q. In what business are you engaged, if any, in connection with street work and paving?

A. I am in the street-paving business as a contractor.

Q. How long have you been a contractor?

A. I have been a contractor pretty nearly all my life; only in brick paving for the last three or four years.

Q. What kind of street or road work did you do before that as a contractor?

A. I did railroad-work and have done turnpike-work.

Q. For how many years, Mr. Arkin, have you been engaged more or less in street paving, macadamizing, sidewalk, and railroad work, and work of that kind generally?

A. Probably twenty years; since I was big enough to get out and get at it.

Q. I will ask you to state if you are acquainted from actual experience with vitrified-brick paving and the method of doing that work and with the material itself.

A. Yes, sir.

Q. And whether or not you have taken and carried out any contracts for vitrified-brick paving?

A. Yes, sir.

Q. In this vicinity?

A. Yes, sir.

Q. State whether or not you have examined the vitrified-brick paving in the pens and alleys at the Kansas City stock yards in Kansas City, Mo., and Kansas City, Kansas.

A. Yes, sir; I have.

Q. Did you examine the paving in the entrances to the exchange building?

A. Yes, sir.

Q. When was that?

A. Within the last three or four weeks; some of it was as late as last week.

Q. I will ask you to state whether or not you made an examination for the purpose of giving your opinion as to the value
1009 of 161,550 square yards of paving in the pens and alleys of the Kansas City Stock Yards Company.

A. Yes, sir.

Q. I wish you would state what, in your opinion, the present worth and value of that paving is. If you have any memorandum you can refresh your memory from it.

A. I took that from the scale in the office of the engineer of the company.

Q. You mean the measurements?

A. Yes, sir; I went over it and looked it up and placed a valuation of $1.05 per square yard upon it; that is the actual cost. I did not figure the contractor's profit in that; that is the cost of the paving alone.

Q. What do you make the total?

A. $169,627.50.

Q. What value did you place upon the paving and the sidewalks on the entrance to the exchange building from Genesee street to what was formerly Bell street?

A. That is, the sidewalk or the paving?

Q. The sidewalks on the entrance to the exchange building from Genesee street to what was formerly called Bell street?

A. 4,360 feet. I estimated that to be worth 18 cents a foot.

Q. What do you make the total?

A. $784.80.

Q. What valuation did you place upon the paving of the entrance from Genesee street to the west line of what was formerly called Bell street?

A. Paving entrance from Genesee street to the west line of what was formerly Bell street, 1,505 yards. I believe that is what the scale shows, and I estimated that at $1.32 per square yard. The total is $1,986.60.

Q. What valuation did you place upon the sidewalk on 17th street from Genesee street to the curb line of what was formerly called Bell street?

A. There is 3,190 feet, I believe. I estimated that to be worth 11½ cents a foot. The total is $5,366.85.

Q. Now, what valuation did you place upon the paving laid in the driveway on 17th street from Genesee street to the curb-line of what was formerly called Bell street?

A. Paving on driveways on 17th street from Genesee street to west line of what was formerly called Bell street, 1,067 yards. I estimate that—that has been paved, I think, twice; twice or three times. I estimate the cost of that has been about $2.70 per square yard.

1100 By Mr. BOYLE:

Q. What do you mean?

A. The concrete has been done over, as I understand it; it has been paved at different times. There is concrete in there, and it has been put in there twice to make a good job.

Q. What do you make the total?

A. $2,955.

Q. What valuation do you place upon the next item—sidewalk in front of horse and mule market?

A. Sidewalk in front of horse and mule market, 5,982 feet. I estimate that to be worth thirteen cents per foot. The total is $777.60.

Q. Now, the next item of paving is on the driveway on the entrance from the exchange building to the west line of what was formerly Bell street; what valuation do you place upon that?

A. I estimated that there is 472 yards, and I estimated the value at two dollars a yard. The total is $944.

Q. The next item is sidewalks from entra-ce to exchange building to west line of what was formerly Bell street.

A. That is 4,260 feet at 22 cents a foot, which makes $937.20.

Q. Did you put a valuation on 436,140 square yards of surfacing?

A. Yes, sir.

Q. What is the value of that?

A. It is worth 18 cents a yard, the actual cost of it.

Q. What is the amount?

A. $78,505.20.

Q. Will you state, from your experience with vitrified brick, what would be a proper and correct allowance for annual repairs to keep such paving in good condition for the uses for which it is to be put in the stock yards in Kansas City here—what per cent. of its original cost?

A. May I ask, do you mean that it is *to* year after year during the lifetime of the brick, and that the paving is not to be replaced?

Q. I mean to keep that paving in constant repair and in first-class condition right along from year to year.

A. Well, it would run from 12 to 15 per cent.

By the MASTER: What paving are you speaking of now?

A. The paving in the pens and alleys. It might possibly be done for ten per cent., but I doubt it.

1101 And in answer to cross-interrogatories propounded to him by Mr. Boyle, attorney general, the witness testified as follows, to wit:

Q. Have you had any experience with the different qualities of vitrified paving brick?

A. Yes, sir.

Q. What brick do they use down there?

A. At the yards?

Q. Yes.

A. I think most all they have put in have been from Pittsburg, Kansas.

Q. Are you familiar with that brick?

A. Yes, sir.

Q. Is it a good brick?

A. Yes, sir; considered first class in all the cities in this neighborhood. When it is convenient to ship and to get the rates they use it here.

Q. It is considered one of the best bricks on the market, is it?

A. Yes, sir; as good as any in the market, I believe; it is used in both cities.

Q. Is that put down in the most approved and durable form over there?

A. At the yards?

Q. Yes.

A. Yes, sir.

Q. What would be the average life of that pavement in the yards?

A. Well, it would last from seven to ten years, probably. It is pretty hard to get at what the life of that would be. In the alleys the life would be a good deal shorter than it would in the pens.

Q. Do you mean to say that a vitrified-brick pavement put down as that is put down in the yards would not last more than seven years?

A. It might, but I doubt it.

Q. How long does a vitrified-brick pavement last on the streets?

A. It has been known to wear out in this city inside of three years so it had to be replaced.

Q. Three years, then, is the average life of brick pavement in cities?

A. No; it is not the average, but they have been known to do it.

Q. What is the average?

A. Well, from four to five years.

Q. It is not the best and most durable pavement to put down?

A. Yes; it is supposed to be.

Q. You don't own any brick plant?

A. No. I am sorry to say I don't. I have tested a good many brick and done a good deal of work, but I don't own a brick plant.

1102 Q. These cattle, hogs, and sheep not being shod, there would not naturally be so much wear on the pavement in the pens as in the alleys?

A. No, sir; not quite so much.

Q. The wagons and the shod horses which use the alleys subject the pavement there to greater wear than in the pens?

A. Yes, sir; it makes quite a good deal of difference. The alleys where the shod horses are ridden and driven are worn nearly as hard as the streets; they keep their horses shod sharp all the time.

Q. How do you know that?

A. I am pretty well acquainted around there. I know a great many stockmen and am in the stock business myself.

Q. In what way?

A. I own horses.

Q. Do you buy stock on the market?

A. No, sir.

Q. In what way are you connected with the stock yards?

A. Not connected in any way.

Q. Your opinion is based simply on what you have seen around there?

A. Well, as to the way things are conducted there, yes, sir. I was asked to investigate this paving matter and I thoroughly investigated it.

Q. And it is your opinion that this paving won't last more than seven years?

A. Well, it might last for ten years, but I would hate to guarantee it—that is, in the pens. I don't believe the paving in the alleys will last over five years.

Q. If a wooden floor will last five years, wouldn't you think a vitrified-brick pavement would last a little longer?

A. Yes, sir.

Q. Well, the testimony of Major Drought is that wooden flooring will last five years; now, do you mean to say that a vitrified-brick pavement would not last twice as long?

A. Well, I don't think it would last twice as long.

Q. What is to destroy a vitrified-brick pavement in one of these pens?

A. The general wear on it.

Q. What wear?

A. There is a number of tons on it every day.

Q. The tramping around of the cattle?
A. Yes, sir.
Q. There is no rotting of the brick, is there?
A. No; they don't rot.
Q. It is just the wearing out of the hard substance?
A. Yes, sir.
Q. You think it would cost from 12 to 15 % to maintain it?
1103 A. Ten might possibly do it, but I would hate to guarantee it for 12 and take a contract to maintain it.
Q. That is to say, if these bricks are put down in first-class style the natural wear and tear year after year would necessitate a cost of 12 per cent. to maintain them?
A. I presume the average would be about that; yes; pens and alleys.
Q. Then it would cost more to repair them than it would the ordinary three-inch plank that they use there; it would be cheaper to use the plank, would it not?
A. No, sir.
Q. Why not?
A. It would cost less, but it would not be cheaper in the end.
Q. Why?
A. The brick will last longer.
Q. A couple of years longer would not equal the difference in price; it costs a good deal more, does it not?
A. Yes; it costs more.
Q. Where have you put down vitrified brick?
A. On Waverly avenue, in Kansas City, Kansas.
Q. When?
A. Two years ago.
Q. What brick?
A. I put down Diamond brick there.
Q. Where is that made?
A. That is made at Kansas City, Missouri.
Q. Is that a good quality of brick, as good as this other we were talking about?
A. Yes; I suppose it is; a man would probably get his foot in it over here if he said it wasn't.
Q. What is your judgment?
A. I think they are just about the same.
Q. Where is it made?
A. It is made at Centropolis, Missouri.
Q. Is that nearer to this point than Pittsburg, Kansas?
A. Yes; it is nearer.
Q. Is it cheaper or dearer than this other brick?
A. It depends altogether on the amount of brick you would buy.
Q. Take the amount you would use at the stock yards.
A. I usually get the same prices from them.
Q. What is the condition of the brick that you put down two years ago?
A. It is in very good condition.

Q. What is your judgment as to the life of that pavement?
A. It will last five years; I have agreed to keep it in repair five years.
Q. Is there hard traffic on that street?
A. It is supposed to be pretty heavy; gardeners and truckmen over that street.
Q. No city truckage?
A. Not much.
Q. Where else have you put down vitrified-brick paving?
A. I have put down vitrified-brick paving in Armourdale, Kansas.
Q. When?
A. That was last year.
Q. What brick did you use there?
A. I used Diamond there also.
Q. Where else have you put down brick pavement?
A. I have put some down in Armstrong.
Q. In what other cities have you put down brick?
A. None.
Q. In Armstrong, Armourdale, and on Waverly avenue; where else?
A. On Halleck.
Q. When did you put that down?
A. I said I did not put any down elsewhere; I put some down in Higginsville, Missouri.
Q. When?
A. I am doing that now.
Q. What brick are you using there?
A. I am using Diamond there, too.
Q. You haven't put down any brick longer ago than five years?
A. No, sir.
Q. You are lately in the business?
A. They have not been using vitrified brick for paving extensively until the last four or five years.
Q. They have not?
A. Not in this country.
Q. Where have they been using it?
A. I have seen it quite extensively in the East.
Q. You do not speak, then, from experience as to the life of brick pavement?
A. Yes, sir.
Q. What experience?
A. My experience what I have seen in eastern cities.
Q. Where?
A. St. Louis, Cincinnati, Ohio; Covington, Kentucky; Columbus and Cleveland, Ohio.
Q. What was your experience there?
A. The average life of the pavement there is about five years.
Q. In those cities?
A. Yes, sir.

1105–1123 Q. Where they pave all kinds of streets with it?
A. Yes, sir; that is the average; about that; some of it will last longer and some less.
Q. Dependent on the character of the usage the street receives?
A. Yes, sir.

By Mr. DANA:

Q. As I understand it, with reference to your judgment, concerning the life of the pavement in the stock yards you had nothing to go by so far as experience in that particular quarter is concerned, but you say you would not care to keep it in repair for less than 12 per cent. of the cost?
A. Yes, sir.
Q. That is your judgment as a contractor?
A. Yes, sir.
Q. What you could afford to do it for yourself?
A. Yes, sir.

Witness excused.

1124 THOMAS J. HAIRE, a witness produced by the complainants, being first duly sworn to testify the truth, the whloe truth, and nothing but the truth, in answer to direct interrogatories propounded to him by D. R. Hite, Esq., counsel for the complainants, testified as follows, to wit:

Q. Where do you live, Mr. Haire?
A. 1520 West 14th street.
Q. How long have you lived at that place?
A. About twenty years.
Q. Are you acquainted with the values of real estate in that vicinity?
A. Yes, sir; according to the prices that are paid and what they are asking.
Q. In Kansas City, Missouri?
A. Yes, sir.
Q. How far is the place which you have described from the stock-yards property?
A. One block east of the line of the stock yards.
Q. Are you acquainted with the values of the property belonging to the stock yards company abutting on Genesee street?
A. Yes, sir; what was paid per front foot.
Q. Well, do you consider the price at which that property was purchased its present value?
A. Yes, sir.
Q. I will ask you to examine this map; I call your attention to a tract of land comprising 42 acres, described by the letter A, that lies east of the State line and west of Genesee street. I will ask you to state what, in your judgment, the present value of that property is.

Objection because the witness is not qualified to give an opinion.

Q. Are you acquainted with the value of the piece of property owned by the stock yards company that lies east of the State line and abuts on Genesee street?

A. I know that property, but I don't know—I don' tremember now the price that was paid for it.

Q. Do you know the value of the property in that tract between the State line and what was formerly Bell street, and the property between what was formerly Bell street and Genesee street?

A. Yes, sir.

Q. Tell the court what, in your opinion, that property is worth.

Objection because the witness is not qualified.

Q. Do you think that the value of that property at the present time is as great as the price which was paid for it?

A. Yes, sir.

1125 Q. I will ask you to state what the present value of that piece of land is.

Objection as not qualified.

By the MASTER: Do you estimate the value of property down there solely on the prices that were paid for it by the stock yards company?

A. Not solely on that, but on what the property is really worth down there.

By the MASTER:

Q. On what do you base your judgment?

A. On what it is worth to sell to anybody; what the property is really worth. Property is scarce down there and that makes it more valuable.

Q. What business are you engaged in?

A. I am clerk for a justice of the peace.

Q. Do you own any property in there?

A. I represent a property on Wyoming [illegible]t, 80 x 126½.

Q. Have you any knowledge of sales of [illegible]l estate that have taken place in that vicinity any time within recent years?

A. Yes, sir; at the time this property was sold to the stock yards company I knew all about it at the time.

Q. Are you acquainted with the prices which the people generally ask for property in that vicinity?

A. Yes, sir.

Q. I again ask this witness to state the value of the piece of property between what was formerly Bell street and Genesee street.

A. About $250 per front foot. There was some of it that brought more and some of it a little less. Some of it brought as high as $450 and some as high as $1,000 per front foot.

Q. Are you acquainted with the values of property lying on Genesee street east of the stock yards, immediately across the street?

A. Yes, sir.

Q. What is that property generalyy worth on an average?

A. It is worth $250 a front foot.

Q. You say that you have charge of some property on Wyoming street?

A. Yes, sir.

Q. To whom does that property belong?

A. To my mother; 80 by 126½.

Q. What, in your judgment, is that piece of property worth?

A. Well, I consider it worth $500 a front foot.

Q. State what, in your opinion, are the elements which enter into the *Q. State what, in your opinion, are the elements which enter*

1126 *into the* values of property in the vicinity to which you have testified.

A. The railroads are pushing their tracks into that territory, and it will not be long until the whole tract will be taken by the railroads.

Q. Are there any other elements of value that occur to your mind?

A. The stock yards company is liable to need more land at any time, and warehouses will take some of the land, and wholesale houses. Of course, the block where our property is located would be more desirable for railroad yards that for warehouses. It is about the only vacant strip of ground that is left in that part of the bottoms.

Q. What kind of industries surround that tract of land down there on every side?

A. Well, the Missouri Pacific and Union Pacific railroads are on the north, the Santa Fe, the Chicago & Alton, and the Kansas City, Fort Scott & Memphis on the east, and the stock yards company owns on the south and also on the west.

Q. Since you have been acquainted with the conditions to which you have testified have the railroad companies been purchasers of land?

A. Yes, sir.

Q. Is there very much land between the land where you live and Genesee street on the west?

A. No, sir; there is only one block, and that is only part of a block in some places.

Q. How about north? Is there very much land north?

A. Two blocks north.

Q. Is there very much land to the east?

A. You might say there is one block and part of another block that is covered by wholesale houses and railroads.

Q. Mr. Haire, what, in your judgment, have been the fluctuations, if any, in the prices of land in that territory since what we call the boom time?

A. Our prices have remained steady since that.

1127 And in answer to cross-interrogatories propounded to him by Mr. Boyle, attorney general, the witness testified as follows, to wit:

Q. That would be at the price of about $50,000 an acre?

By Mr. HITE: That is not the fact; that would -- $72,000.
Q. Your land would be about $150,000 an acre?
A. Yes, sir.
Q. How do you know it to be worth that?
A. It is a good corner, centrally located.
Q. It is a lot; it is not an acre.
A. We haven't got an acre.
Q. So you don't know what an acre would be worth?
A. No, sir.
Q. You have got a good corner?
A. That is quite a valuable corner; yes, sir.
Q. And there are odds and ends of ground around it—small tracts of ground—that are valued at so much a foot?
A. Yes, sir.
Q. You do not value this per acre at all?
A. No; I wouldn't set a valuation on it that way.
Q. Couldn't sell it that way?
A. No, sir.
Q. Haven't got it to sell?
A. No, sir.
Q. You don't know what it would be worth an acre if you had that amount of land?
A. Well, if anybody came there and bought them I think it would be worth just what has been paid.
Q. No matter how much you had?
A. No, sir.
Q. So that if this stock yards was swept away from there and there wasn't any stock yards there this land would be worth just as much?
A. It would be filled up with railroads.
Q. There would be 175 acres of railroads down there then; they would immediately fill up this vacant spot?
A. There is no doubt about their coming in there.
Q. How long have you been holding this property at $500 a foot?
A. We were at one time offered forty thousand dollars for the corner.
Q. When was that?
A. That was the year that the Rock Island first started to build in there.
Q. How long ago was that?
A. That was about ten years ago.
Q. That wasn't during the boom at all?
A. No, sir; I think it was before.
1128 Q. The boom hadn't come here then?
A. No, sir.
Q. Property fell down?
A. No; property has not been sold very much; haven't been forced to do it.
Q. All waiting for something to happen?
A. Yes, sir.
Q. How long have you owned this property?

A. About 20 or 22 years.
Q. What did you pay for it when you got it?
A. By foreclosing a deed of trust.
Q. Did you buy it?
A. Yes, sir.
Q. How much did you pay for it?
A. I think it was about eighteen hundred dollars; that was the lien on it at that time. We had the lien.
Q. Then you foreclosed it?
A. Yes, sir.
Q. You paid eighteen hundred dollars?
A. Yes, sir.
Q. Took it in on a mortgage?
A. Yes, sir.
Q. Of course, it is to your interest to keep up the value of property down there?
A. Of course, we don't want to see property go down. It is not natural for a person to want that.
Q. You would be better pleased to have it go up?
A. Yes, sir.
Q. One reason for that is because you have got some interest down there?
A. Yes, sir.
By Mr. LITTLE: When rent do you get from this property?
A. About seventy-five dollars a month. Of course, before they commenced buying it we got better rents; we got close on to $150 a month.
By Mr. HITE: You were asked something about people holding their property down there in expectation of the railroads or other enterprises wanting it.
A. Yes, sir.
Q. Is it or is it not a fact, Mr. Haire, that those expectations have been realized up to this time?
A. Yes, sir.
Q. Since you have been living in that vicinity has property been purchased largely by railroad companies from time to time?
A. By railroad companies and stock yards.
By Mr. LITTLE: Do I understand that your rents have been cut in two?
A. Yes, sir. As soon as the times got hard we naturally had to reduce rents.

1129-1175 By Mr. HITE:

Q. Did you in making your estimate of the value of the property of the stock yards company, did you do that, and give that value, irrespective of the improvements?
A. Yes, sir; the naked land.

Witness excused.

1176 ALBERT DEAN, a witness produced by the complainants, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to direct interrogatories propounded to him by D. R. Hite, counsel for the complainants, testified as follows, to wit:

Q. What is your name?
A. My name is Albert Dean.
Q. What is your age?
A. My age is 57 years.
Q. Where is your residence?
A. Kansas City, Missouri.
Q. What official position do you now occupy?
A. I hold the position of live-stock agent in the bureau of animal industry, United States Department of Agriculture.
Q. Of what government?
A. United States Department of Agriculture.
Q. Have you the rules and regulations of the department, issued by your superior officers?
A. You refer to the regulations concerning the transportation of cattle?
Q. Cattle transportation.
A. The department has many regulations. My duties as related to the stock yards company in this controversy are prescribed in the regulations issued annually by the Secretary of Agriculture covering regulations concerning cattle transportation.
Q. Is that the official regulation which you received?
A. This is a copy of the official regulations.
Q. Received from Washington?
A. Yes, sir.
Q. You act under this?
A. I act under this so far as cattle transportation is concerned. This map shows the quarantine line against southern cattle described in the regulations; the red line is the danger line or Texas-fever line.

Said regulations, being in pamphlet form, are offered and received in evidence, marked Exhibit L.
Said map is offered and received in evidence, marked Exhibit M. Both are herewith returned as part of the testimony of the witness.

Q. Do you know what are called by the witnesses the quarantine grounds of the Kansas City Stock Yards Company?
A. Yes, sir.
1177 Q. State to the master what cattle are taken care of in those yards—where they come from—then you can explain this map.
A. All cattle originating below or south of the red line shown on this map and described in the regulations presented here are only permitted to come north *north* of the line between February 15th and November 15th of each year for immediate slaughter, and can only come by rail—they cannot come on foot—and when so shipped

they must be kept in separate yards, in which no other cattle are kept. During this time these yards must be sufficiently isolated from other cattle to prevent the spread of this contagious or infectious disease, known as Texas fever or southern cattle fever. The regulations provide that those yards shall be cleaned and disinfected.

Q. Who is the officer to see that these particular yards—the quarantine yards of the stock yards company are kept in proper condition?

A. I have supervision of the yards—that is, with assistants.

Q. Who is the superior United States officer here on the ground?

A. I have charge of the movement of these southern cattle west of the Mississippi river, with office at Kansas City stock yards, at the general offices. I have twelve assistants, but I supervise the inspection of these yards personally, individually, myself every day of the year when here. Sometimes I am absent during the run of grass cattle and during the time this disease is prevalent; it is a warm-weather disease. The grass cattle originating south of this line do not begin to come here to any extent before June, about June; what we term the grass cattle—that is, strictly grass-fed cattle. They begin to arrive about June and are the cattle that bring this disease. During that time I have supervision personally of the Kansas City stock yards.

Q. State whether or not you give any orders about the care, attention, and disinfection of these particular yards.

A. We notify the stock yards company each year that these regulations go into effect, and so far as care of the yards is concerned they have always been very quick to obey orders and comply with the regulations.

Q. You spoke of grass cattle coming about June 1st. State whether any cattle from below this line can go into the other yards after the 15th of February.

A. I think I explained that in my first statement; that
1178 according to these regulations no cattle originating south of this quarantine line was permitted to come north of the line, except for immediate slaughter, and when so shipped they must comply with the regulations which provide that there shall be separate yards for them; now, any cattle in the quarantine yards of the Kansas City Stock Yards Company may be forwarded to any other point under the same restrictions under which they came here—that is, the regulations provide that the waybill of the car shall be marked southern cattle in some plain manner, usually in red ink stamped across the waybill and manifest of the car and a placard in plain letters, which is on card-board usually—we don't have any particular size, but probably about the size of this table, 6 x 8—with plain letters on the card, reading southern cattle; that is tacked onto the side of the car; there are no restrictions upon those cattle going to Topeka or Fort Scott or any other place where they have separate yards and can handle them without coming in contact with other cattle or in the open or a highway; there are some forwarded to Topeka, Fort Scott, and Pittsburg and other places

where they have butcher yards right in connection with the railroad switch.

Q. Then, as I understand you, on the 15th of February these regulations take effect?

A. Yes, sir.

Q. And, under your orders, how must they be kept in these yards?

A. There are no restrictions on these yards any further than they must be kept away from susceptible cattle; they are not allowed to yard any other cattle in these yards. While the regulations provide for cleaning and disinfecting, that regulation was prescribed before the department actually found out what this disease was. It is not followed strictly; it is only in extra cases, as, for example, if some of these cattle should accidentally be yarded in the native yards, then we would apply these regulations and require the yard company to clean and disinfect the pens and alleys.

Q. State in what condition you have found these quarantine yards of the Kansas City Stock Yards Company in your examination and inspection during the last year?

A. We have always found them to comply with the rules. Understand that very shortly after these regulations were first
1179 established, about the time that the present quarantine yards of the Kansas City Stock Yards Company were built, we made the discovery how this disease was communicated, consequently the practice of disinfecting with chloride of lime, as it had been done, was dropped; we found that the disease was communicated by a parasite alone, and all we have to do is to take care and see that it does not go through the air.

Q. How do you take care of it?

A. By depositing the litter from these yards in an isolated place, where cattle will not come in contact with it and disturb it.

Q. Then, state what orders you give for the disposition of the litter from these yards.

A. We direct that the litter from these yards shall be placed at some point where none of the susceptible cattle will come into contact with it until the freezing months would disinfect it; understand that the nature of this disease is such that freezing kills it; it kills the parasite that causes the disease; it is a bacterium that goes through the air; it does not travel far or fast, and consequently the Kansas City Stock Yards Company has selected a piece of vacant land north of the quarantine grounds on their own land on which they deposit the litter from these yards.

Q. On the land of the stock yards company?

A. Yes; north of the quarantine yards and on the west side of the Kaw river, and there they deposit this litter as it comes from the cleaning of the yards; we think it is a safe place; at least no infection has ever come from there.

Q. State whether or not that is on ground that is called unoccupied.

A. Yes; it is unoccupied land.

Q. Would you permit native cattle to be put there at all?

A. No; there are railroad tracks and other obstacles that would prevent native cattle from getting in there.

Q. But if the company wanted to use those yards for that purpose, would you permit it?

A. No, sir; that is one of the restrictions we have placed upon them.

Q. Do you know of your own knowledge how many cattle come daily to those yards?

A. I do not keep account of the daily business; *by* subordinates have charge of the daily receipts and report to me at the end of the year.

1180 Q. I believe you stated that your orders and directions were carried out by the company?

A. Yes, sir.

Q. About dead animals, state whether or not if any one had a dead animal you would permit him to sell it.

A. No, sir; we would hold the dead animal on the same rules as to the litter, with the exception that when these yards were established the only method of disposing of dead animals at these yards was to the Kansas dessic-ating works, which hauled the dead animals in wagons through the streets a short distance. Of course, we had to dispose of the dead animals in some way, and we gave permission for them to go there. While that is not absolutely governed by the regulations, we considered dead animals the same as litter; that would be a most prolific way of spreading the disease, carrying the dead animals out with the parasites on their bodies.

Q. State what would be the difficulty in permitting any one to take infected dead stock out of the yards, allowing the owner to dispose of it as he saw fit?

A. We have to know that the regulations are complied with; it is necessary for us to go and see and supervise the disposition of them, and to permit any person to take dead animals to any place, to different places, would make it impossible for us to supervise it; we would not be able to know whether the regulations were complied with or not.

Q. Is it not a fact, then, that you have absolute control of the dead animal?

A. I think so; yes, sir.

Q. Through the Government?

A. Yes, sir; nobody has ever disputed it; we have never had a test of it.

Q. I mean as a practice, not as a question of law?

A. Practically we supervise and know where they go.

Q. You mean quarantine animals?

A. Yes; quarantine animals; not others.

Q. You call them infected animals?

A. Yes, sir.

Q. What disease do they have?

A. Texas fever is the common name; splenetic or southern cattle fever.

Q. How is it when they drive these cattle to another car or to

other places; how are they compelled to be driven from these yards?

1181 A. They have a chute leading immediately from the tracks into the southern yards, through which cattle are passed when they are brought in and shipped out; the cattle which are intended for immediate slaughter pass through fenced roadways and through private driveways to all the packers but the Dold Packing Company in Missouri, and they have a permit from the State board of agriculture of Missouri to drive the cattle partly through a public street in Kansas City, Missouri, but I don't know just what arrangements they have made in regard to that.

Q. Under your official orders and directions do they permit any other cattle to use the same yards or alleys or places in going to slaughter excepting those from the quarantine ground?

A. Nothing but cattle going for immediate slaughter; they use the same driveways for the native or susceptible cattle going to slaughter that they do for the southern cattle, but under no other circumstances do we allow them to cross any alley or chute, and if we find that susceptible cattle have been unloaded wrongfully they must clean and disinfect the alley or chute before they use it for any other purpose.

Q. How is it as to permitting native or other cattle not from the infected districts occupying the quarantine yards at any time?

A. We do not permit it at all.

Q. Who pays the expenses of keeping those grounds in the conditions that you direct and order?

A. I don't know.

Q. I mean whether you do?

A. The Government does not pay it.

Q. You give orders to the stock yards company and it looks after it?

A. Yes, sir; this order, if you will notice, is directed to railroad and stock yard companies.

Q. What I want to show is that neither you nor the Government pays it.

A. We do not.

And in answer to cross-interrogatories propounded to him by Mr. Boyle, attorney general, the witness testified as follows, to wit:

Q. When this order was issued it was the theory of the Government that it was essential to keep the yards where southern cattle were kept purified and cleaned repeatedly, was it not?

1182 Q. But that is not the theory now?

A. We now consider those yards as permanent quarantine yards, and do not require the company to clean and disinfect them except in case of the wrongful or accidental unloading of cattle, as I have explained.

Q. The only disinfecting that is now done is when infectious cattle get into native pens?

A. Where infectious cattle get into native pens wrongfully; that is the only cleaning and disinfecting that we require except in the

cars, but the stock yards company has nothing to do with that. Last year we had but thirteen cases where it was necessary to clean and disinfect pens and alleys. The records of the company are such that we can tell exactly where stock is taken, and if a car-load of susceptible cattle is wrongfully unloaded in the native division we can follow them to the block and pen where they are penned and have them changed to another pen, and then have the pens, alleys, and chutes which have been infected cleaned and disinfected.

Q. What company has the right to take these dead animals out of the yards and haul them away?

A. I mentioned the Kansas dessic-ating works.

Q. Who is the manager of the institution, if you know?

A. His name is C. W. Bangs.

Q. Now, what arrangement has the Government with him in reference to taking away these dead animals?

A. None whatever; my general instructions permit it. When the dead-animal question first came up there had been no provision made in the regulations for it. I described to the department the situation and the location of the dessic-ating works; that it was close by; that they had only a short haul and came in contact with no susceptible cattle on the streets, and advised that they have the right to dispose of such carcasses, which was approved by silence more than anything else, and we have just kept it up ever since.

Q. Has any other institution or individual the right to take dead cattle from those yards?

A. No, sir; no one else has ever taken and removed any animals from there to our knowledge.

Q. Referring to this place where litter and offal is dumped; it is a place where there is a number of railroad tracks and so on?

A. Yes, sir.

1183-1193 Q. If the stock yard- company desired to build a yard there it would have to remove that litter and disinfect that ground if it wanted to put native cattle there?

A. Yes; unless they would allow the winter to disinfect it. Understand, that cold weather is one of the best disinfectants, because it is a parasite that the cold weather kills.

By Judge HORTON:

Q. If they should not obey your orders what would you do?

A. The act of Congress provides a penalty of a thousand dollars, and I think I would enter complaint in the Federal court. Understand, these regulations are made under an act of Congress.

By Mr. BOYLE: All that the stock yards company has to do is to be careful and see that the cattle which come from these infected districts go into the proper channels?

A. Yes, sir. The waybills are all marked, and whenever there is any question in the mind of the foreman of a gang who is unloading the cattle they appeal ordinarily to our office if the marking is indistinct or anything is wrong; sometimes the waybill gets misplaced.

Q. You do not charge anything for your services?

A. No; I charge the Government.
Q. There is no expense to the stock yards company other than the maintaining of the yards over there?
A. No, sir.

By Judge HORTON:

Q. You say there is no expense; there is the expense of carrying out your orders?
A. Yes; such as follows in carrying out my orders.

By the MASTER:

Q. I understand you to say you have no charge of dead animals in what is called the native yards?
A. No; none whatever. My business relates to this order concerning the transportation of southern cattle, so far as that is concerned. I have other duties.
By Mr. BOYLE: You have a record in your office of the number of cars that come to these quarantine yards?
A. Yes, sir; not only the number of cars, but the actual car numbers and the consignor and consignee.

Witness excused.

1194 And thereupon, the complainants having rested their cause, the defendant Louis C. Boyle, as attorney general of the State of Kansas, in order to maintain the issues upon his part, produced and offered evidence, oral and documentary, as follows, to wit:

E. S. MERRILL, a witness produced by the defendant Louis C. Boyle, as attorney general of the State of Kansas, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to direct interrogatories propounded to him by Mr. Boyle, testified as follows, to wit:

Q. State your name.
A. E. S. Merrill.
Q. What is your age?
A. 63.
Q. What is your occupation?
A. I have been in the real-estate business. At the present time I am not in any business.
Q. What official position, if any, do you occupy?
A. I am one of the county commissioners of Wyandotte county, Kansas.
Q. Your home is in Kansas City, Kansas?
A. Yes, sir.
Q. How long have you lived in Kansas City, Kansas?
A. A little over fifteen years.
Q. During that time what has been your business?
A. Real estate.
Q. How long have you been county commissioner over there?

A. This is the third year.

Q. You are now one of the county commissioners of Wyandotte county?

A. Yes, sir.

Q. What other official position, if any, have you occupied in Wyandotte county since you have resided there?

A. I have been deputy tax assessor there.

Q. How long did you occupy that position?

A. In 1892 and 1894, when the land was assessed. There were two years when the land was not assessed.

Q. You occupied the position of deputy tax assessor in 1892 and 1894?

A. Yes, sir.

1195 Q. I will ask you if it was a part of your duty as tax assessor to assess for taxation the property of the Kansas City Stock Yards Company and lands in the immediate vicinity of those yards in Kansas.

A. Well, it was of the land in the immediate vicinity of the yards. I was one of the board of six assessors, and we all got together and agreed on the land that was to be assessed by metes & bounds, and the stock yards was a part of that land.

Q. Did you individually assess the real estate in the vicinity of the stock yards?

A. Yes, sir.

Q. As I understand you, you were one of a board that assessed the property?

A. All the lands within the city that was designated by metes and bounds on the tax-roll.

Q. Acre property?

A. Yes, sir.

Q. Have you dealt in real estate in the vicinity of the stock yards?

A. Yes, sir.

Q. Take, for instance, that part of the property of the stock yards company that is marked on the map by the letter C and now comprising the quarantine yards, what land was that originally; who owned it?

A. N. McAlpine.

Q. Is that a portion of a considerable tract of land over there known as the McAlpine tract?

A. Yes, sir.

Q. Did you ever have any business relations with the McAlpine tract as a real-estate man?

A. Yes, sir; I was agent to sell it, collect rents, etc.

Q. For how long?

A. For quite a number of years. I don't remember just how long.

Q. Did you sell any of it?

A. Yes, sir.

Q. Do you know the values of lands in and around these bottoms in Kansas, Mr. Merrill; are you familiar with their values?

A. On the west side of the river I consider that I am pretty well equainted with them.

Q. I will call your attention to the real estate that is contained n what is called the quarantine yards of the stock yards company, hat portion of the quarantine yards marked on the map by the letter C, and ask you if you know the value of that land in its present condition, the improvements having already been valued. I will ask you what is the value of that naked land, f you know? Do you know what the value of this real estate is for ny purpose for which it might be used?

A. Yes.

Q. You may state to the special master what it is worth per acre, n your judgment.

A. Five thousand dollars per acre.

Q. Calling your attention now to the tract that is marked D, are you familiar with the character of that land?

A. I have seen it often.

Q. Will you state to the special master what is the character of that land, if you know?

A. It is low, subject to overflow in high water.

Q. Describe it in detail, if you can, Mr. Merrill.

A. A portion of it is accretion. Of course, that goes from low water up to higher land. I cannot say how much of it is in that condition, but a portion of it is.

Q. Do you know what the value of that real estate is, in the condition in which it is today? I do not ask you now what its value is, but as a real-estate man familiar with the values of real estate in that vicinity you may state, if you know, the value of that land.

A. Yes, sir.

Q. What, in your judgment, is it worth?

A. Not to exceed four thousand dollars an acre.

Q. How do you fix the values of this real estate at the figures you have named, Mr. Merrill?

A. For the prices asked and received for adjoining land.

Q. Calling your attention to E on the map, being the north yards of the stock yards company, do you know the value of that real estate? Are you familiar with that real estate?

A. Yes, sir.

Q. Have you been over that property, Mr. Merrill?

A. Yes, sir.

Q. Have you assessed it for taxation?

A. Yes, sir.

Q. Do you know the general conformation of the ground over there?

A. Yes, sir.

Q. I will ask you if you know the value of that land without regard to improvements.

A. Yes, sir.

Q. What is its value?

A. Not to exceed ten thousand dollars an acre.

Q. I will call your attention to that part of the property of the

stock yards company marked B on the map and known as the main yards in Kansas, and ask you if you are familiar with that ground.

A. Yes, sir.

1197 Q. Have you been over it frequently?

A. Yes, sir.

Q. Did you ever assess it for taxation?

A. As I have stated.

Q. You were one of the board?

A. Yes, sir.

Q. Did you examine it when you performed that duty?

A. Well, we were on it so many times we didn't do it that day. However, I was familiar with it; had been over the ground frequently.

Q. How long had you been familiar with it?

A. Fifteen years and over.

Q. You have dealt in real estate around about it at that time?

A. Yes, sir.

Q. Do you know the value of that land regardless of the improvements?

A. Yes, sir.

Q. You may state to the special master what, in your judgment, it is worth per acre.

A. Not to exceed ten thousand dollars an acre.

Q. I now call your attention to that part of the property of the stock yards company which it claims, lying west of Water street, on the river bank, north of the north yards. Are you familar with that piece of ground?

A. Yes, sir.

Q. What is the character of that piece of ground?

A. It is accretion formerly.

Q. Is it even assessed for taxation, Mr. Merrill?

A. It is pretty hard to answer. There was accretions there that was laid off into lots by metes and bounds that lapped onto the high ground. Whatever was shown on the assessment-roll as it was given to us was assessed. Now, whether we took it to low water or not I am not prepared to say, but I think it does go to the water from the amount that was called for in the assessment-roll.

Q. Do you know the value of that land per acre?

A. Yes, sir.

Q. What, in your judgment, is that land worth per acre?

A. Not to exceed four thousand dollars an acre.

1198 And in answer to cross-interrogatories propounded to him by D. R. Hite, counsel for the complainants, the witness testified as follows, to wit:

Q. How long were you deputy tax assessor?

A. In 1892, when the land was assessed, I was deputy tax assessor, and in 1894, when the land was assessed, I was deputy.

Q. Who appointed you deputy tax assessor?

A. Mr. Bridgens.

Q. How long have you been county commissioner?

A. It is going on the third year.
Q. Where did you say you resided?
A. In Armourdale, in Kansas City, Kansas.
Q. How long have you lived there?
A. Fifteen years and over.
Q. What business were you in before you became tax assessor?
A. I was in the real-estate business at that time and before.
Q. That was prior to 1892?
A. Yes, sir.
Q. How much real-estate business did you do?
A. I can't remember.
Q. You don't remember. Did you ever sell any land in connection with the McAlpine tract?
A. I sold some of the McAlpine tract.
Q. When?
A. I can't tell the exact year without referring back, but it was during my time while I had charge of his property—from 1883 up to 1888. In 1888 I went to California on a visit, and I turned his property over to another agent.
Q. Then it must have been prior to 1888, was it?
A. Yes, sir.
Q. That you knew of any sales over there?
A. That I made any sales.
Q. Have you ever known of any sales over there since?
A. By hearsay; I haven't made any.
Q. Well, have you ever heard of any sales?
A. Yes, sir.
Q. How much land was there in that tract of McAlpine's?
A. I could not tell you; part of it was platted and part was not.
Q. How much of it was platted?
A. That I can't tell you.
Q. How much was not platted?
A. That I can't tell you.
Q. You didn't have anything to do with the land after 1888?
A. No; I think not.
Q. Do you know of any sales of any land that have taken
1199 place in that vicinity in recent years?
A. I haven't made any.
Q. That wasn't the question. Do you know of any sales that have been made?
A. By hearsay. I didn't suppose you were going to take hearsay testimony.
Q. When did you know of any sales?
A. I have heard occasionally of a house and lot being sold there, but I can't tell you exactly the date. One of my customers who used to rent from me bought a house and lot in that addition a short time ago.
Q. When did he buy that house and lot?
A. Three years ago.
Q. Whereabouts was that house and lot with reference to that tract of land marked C?

A. West of it.
Q. How far?
A. Between what is known as First and Second streets; probably a quarter of a mile. I couldn't tell exactly without seeing a map of it; probably a quarter of a mile; it may be a little more.
Q. Is it more than a quarter of a mile?
A. Just about a quarter; more or less.
Q. How much land was bought and sold at that time?
A. One house and one lot. I owned the one lot and the house that was sold there.
Q. How much was paid for the house and lot?
A. The parties told me that they got it for six hundred dollars.
Q. A 25-foot lot?
A. It was a pretty good little cottage on it.
Q. Do you know of any other sales?
A. I can't tell of any other sale recently; it has been pretty dull to sell anything. I can't tell of any sales within a year or two.
Q. You have not been in the real-estate business, as I understand you, since 1888?
A. Oh, yes, I have; I didn't say so.
Q. What did you do after 1888 with reference to real-estate business?
A. I had an office after I came back from California.
Q. Did you do any business?
A. Yes, sir.
Q. How much business did you do?
A. I couldn't tell you.
Q. Did you ever sell any piece of land at all after 1888?
A. Yes, sir.
Q. What piece of land did you sell?
A. I sold quite a number; I couldn't tell you all of them. I sold three houses of my own.
1200 Q. Whereabouts were those three houses located?
A. One was on First street—that is, First now—and two of them were on First street between Osage and Shawnee avenue.
Q. How far are they from the stock yards?
A. Which yard do you mean—the quarantine yard?
Q. Yes.
A. Three blocks west and one south.
Q. Whom did you sell that property to?
A. One was named Burke, one of them, and I think one was Dusenroth, if I remember.
Q. What year was that?
A. Three or four years ago; three years ago, I think, this spring.
Q. Was that while you were tax assessor?
A. I couldn't say whether it was the same year or not; I don't know whether it was or not.
Q. Did you receive the consideration for that transaction in cash?
A. Yes, sir.
Q. It was all paid to you in cash?

A. Well, it was sold on time, but it was cash. They have paid for it now.

Q. How much of your property did Mr. Burke buy—how much did he buy?

A. A house and one lot.

Q. A 25-foot lot?

A. Yes, sir.

Q. How much did he pay?

A. Eight hundred dollars.

Q. What kind of a house was there on it?

A. There was a four-room house, pantry and cellar.

Q. Had you lived in that house prior to the time you sold it?

A. Oh, no.

Q. Had you rented it?

A. Yes, sir.

Q. How much rent did you get for it?

A. At the time they bought it they were paying me eight dollars a month. They were my tenants and lived in there before they bought it.

Q. You sold that property for eight hundred dollars?

A. Yes, sir.

Q. How much would that be an acre?

A. The house cost $500.

Q. How much would that be an acre for that property you owned?

By Mr. BOYLE: With the house on it?

By Mr. HITE: Just as it was.

A. I valued the lot at $400 and the improvements at $400.

1201 Q. Now, in valuing that improvement at the other four hundred, Mr. Merrill, did you value it on account of the revenue that it brought?

A. No.

Q. You did not?

A. No.

Q. How did you value the improvement, then?

A. What I paid for it.

Q. That was the way you valued that particular piece of land, was it?

A. Yes, sir.

Q. The amount that the land cost, then, you added to the amount that the house cost?

A. The land didn't cost me that.

Q. How did you get the valuation of four hundred dollars on the lot?

A. That was the value I put on it; that was what property was selling at in that neighborhood.

Q. That would have been four thousand dollars an acre, wouldn't it?

A. Yes, sir.

Q. You say that was about half a mile from the stock yards?

A. I said it was three blocks west and one south.

Q. You say that sale was made about the time you were tax assessor?

A. It was about that time; it must have been, because it was about three years ago. I sold it on time, on yearly payments, and it is paid out now. I think that 1896 was the last payment. Now, I wouldn't be sure, but I think that 1896 was the last payment.

Q. Did you assess that house for taxation?

A. Yes, sir.

Q. What value did you put on that piece of property for taxation?

A. I could tell a good deal better if I saw the books, because I can't remember the difference prices I put on property.

Q. You certainly can remember the price that you put on your own property?

A. No, sir; I think, though, it was about two hundred dollars for the improvements.

Q. Was that the amount that you put on the lot—two hundred dollars?

A. Well, I think we valued those lots at that time at four hundred dollars; I wouldn't be sure. They had been valued higher than that, and we cut the valuation down on all of that property all through that part of the country.

Q. Do you desire that the special master shall understand
1202 that your best recollection is that you assessed your lot that Mr. Burke bought at four hundred dollars, with the improvements?

A. No, sir; the improvements are always special.

Q. You separate the improvements from the real estate, do you?

A. Always.

Q. At how much did you put in the property for taxation altogether?

A. I think six hundred dollars, as near as I can remember.

Q. What was the number of that lot, and the block number?

A. That was block 13; now, I wouldn't say certain whether that was lot 33 or 34; of course, it is very easy to get at it on the map; if you have a map here I will give it exact.

Q. It was either 33 or 34?

A. I think so; it was near that.

Q. Well, now, you own both pieces, 33 and 34?

A. Yes, sir.

Q. Did you put the same valuation for taxation on both of the lots?

A. No, sir; I did so far as the ground was concerned.

Q. Well, now, if this was 33, was the lot next to it, 34; was that improved?

A. Yes; it was improved. I wouldn't say which number it was without looking up the map; of course, I may be mistaken about the numbers.

Q. But your best recollection is that you put six hundred dollars valuation on the property for taxation that you sold to Mr. Burke?

A. I think that was the field-notes. Now, mind you, the taxa-

tion didn't go on from the field-notes; they are just three times as it goes on the tax-rolls.

Q. Do you know of a sale of a piece of property owned by Mr. Haines called the Hopkins planing mill?

A. Yes, sir.

Q. Do you know where that is, with reference to the stock yards?

A. Yes.

Q. Do you know of some property owned by Mr. Haines consisting of four lots on Kansas avenue?

A. No; I don't know that he ever owned anything on Kansas avenue.

Q. Do you know what amount Mr. Haines received when he sold the Hopkins planing-mill property?

A. I never was able to find out; have often inquired, but have never been able to find out.

Q. Well, now, Mr. ——, did you know of any other sales of
1203 property around the stock yards?

A. This property that I spoke of was as near as any; I bought some that is within about the same range.

Q. Where did you buy any?

A. I bought a lot adjoining the Rock Island depot there.

Q. Down on Wyoming street?

A. No; it is between Third and Fourth street, Berger avenue and McAlpine, there w-ere the depot is located.

Q. That is over in Kansas City, Kansas?

A. Yes; I thought you were confining me to that State, now.

Q. You say you bought a lot down there?

A. Yes, sir.

Q. When did you buy that lot?

A. I think, three years ago this spring.

Q. A 25-foot lot, was it?

A. Yes, sir.

Q. What did you pay for it?

A. Six hundred dollars. There was a house on it.

Q. How far is it from the stock yards?

A. About half a mile from the quarantine yards.

Q. How much of a house was on it?

A. There was a five-room house on it.

Q. You say there was a five-room house on it; was that on it when you bought the lot?

A. Yes, sir.

Q. What did you do with that piece of property?

A. Got it yet.

Q. What do you ask for it?

A. One thousand dollars. I spent four hundred dollars on it since then.

Q. On the house?

A. Yes, sir.

Q. Do you rent the house?

A. Yes, sir.

Q. How much rent do you get?
A. Ten dollars.
Q. Now, in the valuation which you put upon that property, do you value it according to the rent you get?
A. No, sir.
Q. How do you arrive at its value of one thousand dollars?
A. I will just take that for it; I don't care what the value of it is.
Q. You won't take any less?
A. I haven't had a buyer at that price.
Q. Will you take any less?
A. Cash?
Q. Yes.
A. Yes.
1204 Q. How much less?
A. I will take nine hundred dollars cash and give you a deed to it tonight.
Q. You say that you do not put a valuation on that house by reason of the rent that it brings in?
A. Not at all.
Q. What elements make up your judgment as to the value of the property?
A. What it has cost me.
Q. What it has cost you?
A. Yes, sir.
Q. Then in arriving at all of these values do you arrive at them in the same way?
A. Not altogether.
Q. You say not altogether. What else makes up your ideas of value?
A. There is a vast difference in location—prospective value—difference in men's ideas.
Q. Is there any prospective valuation put in the price of nine hundred dollars on this piece of property?
A. Well, hardly at that price. If you will allow me to do so, I will tell you why I bought it.
Q. Go ahead.
A. I was one of the parties to buy the right of way for the Rock Island Railroad folks and I offered fifteen hundred dollars for this same property to the parties that owned it, and they wouldn't take less than seventeen hundred, and we wouldn't pay it. I afterwards bought it for six hundred dollars, thinking it was close to the depot there, and that the railroad folks would take it off of my hands at a thousand dollars, but I got fooled on it. I went to work and improved it and got this house on it, and I rent it for what I can get out of it; but it is situated so that in all probability the Rock Island folks will need it to make more room around their depot, for they only have 25 feet in which to get around it. That is the reason I bought that property.
Q. And that is the reason that you now place the valuation of nine hundred dollars upon it?

A. That is one reason. I have got a house and lot that is just as good as that and rents for the same price in the next block adjoining it. There is seven lots and a street between that I am selling today for eight hundred dollars that cost me more money to build than that building did that brings in the same rental.

Q. Have you ever bought any other property in the vicinity of the stock yards?

A. I guess that is about as close down to the stock yards
1205 as I have owned property that I remember now. I have sold all through the town, but I don't remember and don't believe I have got any closer than that property. I mean I have sold for others closer.

Q. You have placed a valuation of four thousand dollars an acre on D?

A. I said not to exceed that.

Q. Do you know of any property in that vicinity that has been sold for any such price?

A. No, sir.

Q. Do you know any property within a thousand feet of it that has been sold for any such price?

A. Quite lately?

Q. Within recent years—four or five years.

A. Only hearsay.

Q. What do you know by hearsay?

A. I don't want it to go on record that I make this statement on oath because it is only hearsay.

Q. We understand that.

A. That property where the Swift folks are building their lard-house I was told was sold for four thousand dollars at the rate of four thousand dollars.

Q. How much of that land is there?

A. I can't tell you how much there is.

Q. Do you know the land at all?

A. Oh, yes; it is in block D.

Q. Do you know how much of it was acres or lots?

A. There was less than an acre.

Q. Half an acre?

A. Really, I can't tell you how much it is. I should judge it is a tract about 150 feet square.

Q. In making up your judgment in reference to the four thousand dollar an acre valuation that you put——

A. I said not to exceed that.

Q. Did you take into consideration the purchase by the Swift's?

A. Somewhat; yes, sir.

Q. What do you mean by that?

A. I don't think that land is worth four thousand dollars an acre, to get right down to it. I wouldn't give that for it.

Q. Is that the reason you say four thousand?

A. I say it would not exceed that.

Q. You say you know where the Hopkins mill property is located?

A. Yes, sir.

Q. You say you never heard the price at which it sold?

1206 A. Yes; I have heard the price—different prices.

Q. What have you heard?

A. I heard he got ten thousand dollars for the tract. I heard he got five thousand. I heard he got twenty-five thousand, but I never believed any such fancy prices at all.

Q. It is in evidence here that there — forty-two thousandths of an acre in the Hopkins property and that it sold for $12,500. You know where that is with reference to the stock yards, do you?

A. Yes, sir.

Q. Would the knowledge of such a sale as that have any influence upon your judgment in making up your valuation of the property marked C?

A. None at all.

Q. Would not have any effect upon it at all?

A. No, sir.

Q. Do you know of any other transactions in the vicinity of E or do you know of any transactions of the purchase or sale of real estate in the vicinity of E?

A. Only as I have heard it.

Q. You know of none under your own observation?

A. I didn't make any.

Q. How do you get at the valuation of ten thousand dollars an acre on E?

A. There is a party by the name of Nelson whose property I handled for several years who bought at the time the stock yards company extended from Bell street over. At that time he bought some land down there in there right adjoining the Northwestern track on James street. He told me he thought he was going to get in the way of somebody and he concluded he had a snap there. He bought that piece of property and he told me he paid fifteen hundred dollars for it—a 25-foot lot.

Q. When did that transaction occur? You say at the time they were purchasing property east of Bell street?

A. It was two years and a half ago, as near as I can get at it.

Q. As I understand you, you base your valuation of E on information of that character?

A. Well, partially.

Q. Suppose, as a matter of fact, Mr. Merrill, Mr. Nelson had paid one hundred dollars a foot for that. Would that alter your judgment concerning the value of E?

A. I don't know that it would materially.

Q. Suppose that the lots fronting and surrounding E have averaged $100 a front foot in sales for the last ten years. Would that alter your judgment with reference to the value of E?

A. No; I don't think it would.

1207 Q. You would still think that E was worth ten thousand dollars an acre?

A. Not to exceed that.

Q. Now, then, state, Mr. Merrill, how you get at that valuation of ten thousand dollars an acre for E.

A. From my acquaintance with people who owned property in there that have been talking to me during different times during the last ten years. They have not asked those prices for it.

Q. What persons have you talked with concerning the value of property in that vicinity?

A. I can't remember all the names.

Q. Just name one of them, sir.

A. I had one customer. She is dead now. I don't suppose you care to refer to her. *He* sold for less than that.

Q. What was his name?

A. It was a woman.

Q. What was her name?

A. I think it was McCotton.

Q. Do you remember any other persons who have talked with you about it?

A. There was a piece of land over near this tract that you speak of that Charley Wilson, a real-estate man, had some dealing with, and he told me the figures that he asked for the land and he tried to get this man Nelson to buy it. It was encumbered considerably and he would have had to assume an incumbrance on it. Mr. Nelson came and asked my advice about it and I told him to keep his hands off.

Q. Do you know where that tract of land is?

A. I can't tell you, only it was near that church that was built by the Fowlers. I forget the name of it; near Water street and Wood street, somewhere, where they come in together in that neck. Perhaps the Major can tell you where that church is located.

Q. Can you recollect any other person you have talked with about values down there?

A. Oh, yes.

Q. Will you state them, please?

A. Mr. Kerr owns property on Wood street there. He was one of the assessors with us.

Q. You say you have talked with him about values down there?

A. Yes.

Q. Where is Mr. Kerr?

A. I can't tell you. I haven't seen him for six months. I presume he lives there, though.

1208 Q. Do you say he owns property down there in that vicinity?

A. Yes.

Q. Did he talk to you about the value of his own property?

A. Yes, sir.

Q. Do you know of the purchase by the stock yards company of the property lying immediately north of the tract marked E?

A. I don't know anything about the stock-yards purchases.

Q. When did you make any inquiries concerning the value of property around the tract marked E?

A. Oh, I have right lately, and some time before.

Q. How lately?
A. Well, within the last 24 hours; that is close enough.
Q. Whom did you inquire of?
A. I inquired of Mr. Cable, for one, and of Mr. Beard, for another.
Q. What business is Mr. Cable in?
A. I don't know what business he is in.
Q. What business is Mr. Beard in?
A. I believe they both have an office; I think they are in the real-estate business.
Q. Do they own property in that neighborhood?
A. They have charge of some; some for sale; I think they own some, too.
Q. Do you know what prices they put on the property they have for sale?
A. I understood some of it was seventy and eighty dollars a front foot.
Q. How much would that be an acre?
A. About $5,600.
Q. So when you consider this property worth ten thousand dollars an acre, you put it at one hundred dollars a foot, do you?
A. No, sir.
Q. How much a foot do you put that land?
A. I haven't priced it by the foot; I priced it by the acre.
Q. Then you can price it by the foot?
A. I could, but I haven't done it; I haven't been asked that question.
Q. I now ask you to price that property by the foot.
A. If you want me to figure it out, I will do so.
Q. I desire that you do that, Mr. Merrill. What valuation do you put on that property marked E, east of Water street, by the foot?

—. ——.

1209 Q. You understand that at the rate of eighty dollars per front foot the property would be worth twenty thousand dollars an acre?
A. Yes, sir.
Q. That is clear enough now, is it?
A. Yes, sir.
Q. Real-estate men estimate ten lots to the acre, do they not?
A. An acre will not make ten 25-foot lots; there is a fraction over nine.
Q. Now, that is your best judgment as a real-estate man, is it?
A. Yes.
Q. That you cannot get ten 25-foot lots out of an acre?
A. Yes, sir; not full ones.
Q. So that in estimating the tract E you have no reference to valuations of lots at all?
A. No; now, let me explain a little bit.
Q. Certainly.
A. When I was asked to put a price on this, this was vacant land without anything on it; it was unplatted and vacant land; I put a

valuation on it in that shape. Now, you want me to say how much is it worth after it is platted, been improved, and business established; all its surroundings established, which will make property valuable, if there is any value in the property. Now, I have put that price on the land and say it is perfectly vacant just as it was left by nature.

By Mr. BOYLE: And in the market for sale?

A. If you are going to improve the property and its surroundings, that is an entirely different thing; I will work on it with you, but that is not cross-examination on values.

Q. Now, then, in making up your valuation with reference to the tract marked E, you consider that as naked-acre property without any improvements and without any business on it at all?

A. Yes, sir.

Q. That is the fact, is it?

A. Yes, sir.

Q. Now, do you know of any vacant acre property in the vicinity of the tract marked E?

A. I guess it has been platted down there, all around there.

Q. Then, do I understand that you do not know of any vacant acre property down there in the vicinity of the tract marked E?

A. Define the lines of what you call in the vicinity; how far do you want to extend from that?

Q. Within a thousand feet.

A. Between the two rivers?

Q. Yes; except right down on the river bank, say within
1210 a thousand feet each way.

A. There is acre property in there that we assessed as acre property by metes and bounds.

Q. How far is it from the tract marked B?

A. All the packing-house land is in that shape, and the railroad land; the C., B. & Q. has some acre property in there.

Q. In making up your valuation of the tract E, did you take into consideration the value of all the other property that you have in mind as acre property in that vicinity?

A. Under the same conditions.

Q. Now, Mr. Merrill, do you know anything about the stock-yards business?

A. No, sir.

Q. Do you know how much revenue the company gets?

A. No, sir.

Q. Do you know how much its business is?

A. What I have heard in this investigation; that is all I know about it.

Q. Do you know whether there are any other stock yards within one hundred miles of these or not?

A. Not very large ones.

Q. You don't know of any that is within one hundred miles?

A. There is not any very large ones.

Q. You don't know anything about the expenses it takes to operate the stock yards, do you?

A. I am not supposed to know anything about its business; no, sir; I don't know anything about the expenses of running that stock yards.

Q. Assume, as a real-estate man, that that property brings in a net revenue of six per cent. on a valuation of forty thousand dollars an acre, and that it is improved property. Now state to the special master what, in your judgment, such property would be worth.

Objection as incompetent, irrelevant, and immaterial. Objection sustained.

Complainants offer to prove by this witness that if this tract marked E produces a net revenue of six per cent. on a valuation of forty thousand dollars an acre, including the improvements, that the land is actually worth at this time, including the improvements, forty thousand dollars an acre.

Q. Do you know where the Transit hotel is located in the bottoms?

A. Yes, sir.

1211 Q. What is that piece of land worth?

A. I don't put any valuation on the Missouri land at all.

Q. Do you know the property of the Armour Packing Company?

A. Where the plant is?

Q. Yes.

A. Yes.

Q. What is that property worth per acre, with all the improvements on it?

A. I should have to go and find out what the improvements cost before I could make an estimate.

Q. Do you know anything about the revenue of the Armour Packing Company?

A. No, sir.

Q. Do you know where the Dold packing-house is?

A. Yes, sir.

Q. That is in Missouri?

A. Yes.

Q. Do you know where the Fowler packing plant is?

A. Yes, sir.

Q. What is that land worth per acre, exclusive of improvements?

A. I suppose the raw land implies now the same as E, doesn't it?

Q. I mean exclusive of the improvements on it.

A. A great deal of that land there is accretion that would have to be raised. It was low land, all of it, in the first place, and not considered very valuable at the time they bought it or at the time they made it.

Q. Do you know what it is worth?

A. I don't think that would exceed eight thousand dollars an acre as wild land, before it was improved at all.

Q. I call your attention to a piece of land which lies in between the tracts B and E that is used for the terminals of the Union Pacific and Missouri Pacific Railway Companies. Do you know that piece of land?

A. Yes.

Q. What is that worth for railroad purposes?

Objection as immaterial. Objection sustained.

Q. What is that land worth for any purpose just as it stands today; for any purpose?

A. The land is incumbered with all those tracks; it wouldn't exceed the price of B.

Q. Now, what is the land worth in this tract marked E, concerning which you have testified, lying east of Water street; in its present condition, just as it stands today?

Mr. Boyle objects to the question as not proper cross-examination.

1212 By the MASTER: I do not think it is proper cross-examination; he has not testified to the value of the land, with the improvements on it, but he may answer the question.

A. I don't know.

Q. Then, as I understand your testimony, Mr. Merrill, you are not testifying about the value of the property as it stands today in its present condition. Is that the fact?

A. Not improved property.

Q. You are not testifying about the value of the tract E as it stands today?

A. Not improved property.

Q. You can answer that question yes or no. You are not testifying about the value of tract E as it stands today?

A. No.

Q. I call your attention to the tract C and ask you to state to the special master what is your best judgment as to the value of that property as it stands in its present condition today.

A. I don't know.

Q. Then when you testify about the value of the property marked C you do not testify about its actual value as it stands today, do you?

A. No, sir.

Q. Now, I call your attention to the tract marked D. I will ask you to state, if you know, what the stock yards company paid for that land.

A. No; I don't.

Q. Suppose the stock yards company paid five thousand dollars an acre for that property, is it worth that?

A. That wouldn't cut any figure.

Q. You say that is the way you get at the value of your property, though?

A. No; I didn't say that.

Q. Didn't you say that you asked Mr. Burke the amount that he paid you for his property because it cost you that?

A. No; I did not. I told you I didn't pay as much for that lot as what I sold it for, only on the improvements.

Q. Didn't you say, with reference to the piece of property down by the Rock Island depot, that you paid six hundred dollars for it?

A. Yes, sir.
Q. And that you spent four hundred dollars more?
A. Yes, sir.
Q. And that you held it at a thousand dollars?
A. Yes, sir.
Q. Does the cost of that property enter into your valuation of it?
A. Not very much at the present time. It does a little;
1213 not very much.
Q. So, if these gentlemen paid one thousand dollars an acre for this land, it is no criterion as to what it is worth now?
A. They are liable to get bit as well as the rest of us.
Q. Just answer the question. If these gentlemen, the stock yards company, paid one thousand dollars an acre for this land twenty years ago, or fifteen years ago, or five years ago, is that any criterion of its present value?
A. No, sir.
Q. Now, I call your attention to the tract marked B. I will ask you to state what is the present actual value of that property just as it stands today?
A. I believe it has been ruled once that I should not answer that.
Q. Do you know what the present actual value of the tract marked B is; just as it stands today?
A. No, sir.
Q. Then when you testify about the value of the tract marked B you do not testify with reference to its value just as it stands today?
A. No, sir.
Q. Do you know the property occupied by the Merchants' bank, on the corner of Sixth and Minnesota avenue, in Kansas City, Kansas?
A. Yes, sir.
Q. From your knowledge of real estate in that city, are you able to state the value of that property at the present time?
A. The wild land?
Q. No; just as the property stands today.
A. I would not like to put a price on that just now without having time to consider it a little bit; there are valuable improvements on the land.
Q. Have you had time to consider the valuation which you have put on the stock yards company's property?
A. All I wished to have.
Q. How long a time have you been considering these values?
A. I have considered these values for years.
Q. Do you know the value of the property I have mentioned about the Columbia building; do you know the value of that piece of property?
A. No; I wouldn't put a figure on it.
Q. Suppose you were called upon to appraise that property by reason of your being an assessor, would you consider the
1214 value of the improvements?
A. Certainly, if I were going to appraise it, I should.

Q. How much ground does that stand on?
A. I could not tell you; those lots are cut up in different ways; they do not stand today as the original survey was, so I can't tell the exact size.
Q. Did you ever assess that property?
A. Yes, sir.
Q. What valuation did you put on it?
A. I can't tell you.
Q. How long ago has it been?
A. 1894.
Q. You can't tell anything about that?
A. No; I can't; not today. I assessed the whole street there, but I can't tell the prices of the different pieces of property.
Q. Now, is that land worth two hundred dollars a foot on which that building stands?
A. With the improvements on it?
Q. No, sir; just the naked land, but with everything surrounding it, just as it is, Mr. Merrill.
A. I think that would be — pretty good price for vacant land on that street.
Q. With the surroundings just as they are?
A. Yes, sir; I think that would be a pretty good price.
Q. How about one hundred and fifty dollars a foot; would that be a fair price?
A. That would be a little nearer.
Q. Is it worth a hundred and fifty dollars a foot?
A. I think it would probably sell for that.
Q. What is the lot standing in the same position in the block one block north worth?
A. Sixth and State?
Q. The corner of Sixth and State, just naked land without any improvements, just as they are now.
A. I don't care about putting a price on those lots up there in the hills.
Q. Is it worth fifty dollars a foot?
A. I will not make a price on that.
Q. Is it worth that much?
A. That land has been filled. I don't know whether it is up to grade or not. There is a heavy grade there at the location you speak of. It is rather a difficult piece of ground to put a price on.
Q. Is it worth as much as the corner you have just spoken of?
1215 A. No, sir; there is nothing on State street that is worth as much as Minnesota avenue.
Q. How much difference is there?
A. One is a business street; the other is a residence street.
Q. Well, does that make any difference in the prices of the naked land?
A. Yes; one is a business street, the other a residence street.
Q. Why does it make any difference; is it because of its use?
A. It is on account of the use that the street is put to.

Q. In reaching a conclusion as to the valuation of land do you take into consideration the use to which it is being put?

A. In some locations I do.

Q. You don't do that generally?

A. It is according to whether it is a naked lot or whether you are coming down to acre lots. There is a vast difference between the two.

Q. I am now asking your judgment about lot property. When you give the value of such property as that do you take in consideration the use to which it is being applied?

A. We value the three business streets of Kansas City higher than we do any other streets in the city.

Q. You have some reason for that, haven't you?

A. Because of its business it commands higher prices and higher rents.

Q. The higher rents a property will bring, the more valuable it is?

A. It is considered so.

And in answer to redirect interrogatories propounded to him by Mr. Boyle, attorney general, the witness testified as follows, to wit:

Q. Do you know where the Rex mill site is located?

A. Yes, sir.

Q. How far is that from the stock yards—south end of the stock-yards property?

A. Well, it is about three-quarters of a mile south.

Q. What business plant of any magnitude is in the same immediate vicinity as the Rex mill site?

A. The Schwarzchild & Sulsberger Packing Company is just across the river from there.

Q. What is the character of the land down there about the Rex mill site?

A. It is very nice land; nice, even bottom land.

1216 Q. Level land?

A. Yes, sir.

Q. I will ask you if there is any vacant land lying west of the quarantine yards here.

A. Yes, sir.

Q. How much vacant land is there lying around there in that general area?

A. Well, within what distance; a radius of how much? There is one end of the yards that is entirely vacant. The north end of the yards back of Swift's packing-house. That is entirely vacant so far as any improvements go, and on the west——

Q. Is that level land there?

A. It is bottom land, level land, yes.

Q. Mr. Hite has asked you whether in placing your valuations upon this property you have based them upon the present condition of the property, and you say you have not. What do you mean by that answer?

A. Repeat that question again.

Q. You stated to Mr. Hite that you did not place your valuation upon this property as it stands today. What do you mean by that answer?

A. The value of the land that had no improvements on it nor any surroundings that would make it valuable.

Q. Now, I want to ask you this question: Leaving these tracks as they are, Mr. Merrill, and the packing-houses as they are, and this vacant property as it is, and these lots for sale as they are, on the market as it has been there for ten years, with the parties offering it for sale; then put in, in addition to that property, the property that is now occupied by the stock yards on the market for sale, with these conditions as they exist today surrounding them, but with the improvements away from there?

A. The stock-yards improvements?

Q. The stock-yards improvements. That is what I am referring to all the time. Is the valuation which you placed upon the land in your direct testimony the valuation which you would put upon it according to my question now?

A. I think I understand the question if you will let me explain. The stock yards are to be moved away?

Q. Yes; move them away.

A. The stock yards company owns the land just west of the present yards, bought for the purpose of moving these yards onto these lands.

By Mr. DANA: Where do you mean?

1217 A. West of Armourdale, adjoining Armourdale on the west. They intended to move the yards there until very recently. They still own that land. For purposes best known to themselves they still own that land. The railroads have been built in, too. The Belt line has built in there since those yards were established, so that all the railroads that come to Kansas City have access to that land. They are close at the present time. The land is open to use in case they want it. The terminal road runs right within a few hundred yards of the present land. If they move their yards from this place they will undoubtedly go to the other ground; if they don't, somebody else will come here. The market here will demand stock yards. If they wish to throw up the sponge and let somebody else come in these men can get land at the figures that we talked of and even less for their stock yards.

By Mr. HITE: Right in the bottoms?

A. In the bottoms. All the railroads are connected, so that that will not ruin any business that they have here. They can move those yards on to that land with the only inconvenience and expense of moving the improvements in the shape of pens and buildings. The expenses would be for labor. They have the material. For years they have built everything there, put it together, so as to move it without tearing it to pieces. I don't know that they are doing it now, but they did for years.

Q. So they could take it down in sections and move it and put it up; that is what you mean?

A. That is what I mean.

Q. That it could be handily and easily moved?

A. Yes, sir; and if those yards were back here this land could be used for other purposes, and I think it would not exceed ten thousand dollars an acre. I don't think it is worth that. I don't say it is worth that. That would be enough.

Q. With these conditions surrounding it just as they are now?

A. Yes; if these improvements be taken across the river here and then get a bridge here, there is land here that can be bought at those figures. They are not in a box that they have got to go into Missouri and buy this high-priced land unless they choose.

1218 Q. The question that I wanted to call your special attention to is this: I don't care where the stock yards went, but I am glad that you have explained there is lots of land west that they could have for stock-yards purposes. What I wanted to call your special attention to is with the stock-yards improvements away from there, regardless of where they went, and with these other conditions surrounding the land left vacant just as they exist there now, then with this land on the market for sale, state the valuation which you would put upon it.

A. Not to exceed ten thousand dollars.

And in answer to recross-interrogatories propounded to him by D. R. Hite, counsel for the complainants, the witness testified as follows, to wit:

Q. Did you ever sell forty acres of land in the bottoms?

A. Not in one tract; no, sir.

Q. Did you ever, in the whole course of your dealings, sell that much land?

A. I don't know whether I did or not.

Q. Did you ever have any experience whatever in dealing in large tracts of land, however large in price?

A. Never have closed any trades of that kind; had some of them for sale, but never closed any trades.

Q. How far is this land that you spoke of to which the stock yards company could so readily remove from their present location?

A. About two miles.

Q. Now, in your answer to the attorney general's question, did you intend to convey the idea that the railroad switches and terminals would remain right there where they are and the stock yards moved two miles?

By the MASTER: I do not see what good can come of this cross-examination.

By Mr. HITE: I ask that the answer of the witness to General Boyle's question be stricken out.

Motion sustained.

Questions by Mr. LITTLE:

Q. You say you have never sold any large tracts of land?

1219 A. Never completed any trades.

Q. Have you ever tried to sell any?
A. Yes, sir.
Q. Where and what was it?
A. It was the Weston Beef Packing Company.
Q. How extensive was that tract?
A. Ten acres.
Q. Where is that ten acres?
A. It adjoins Schwarzchild & Sulzberger's packing plant.
Q. On which side?
A. On the southwest.
Q. For what did you offer that, Mr. Merrill?
A. There was a packing plant on it and improvements on it, and the whole thing was offered for seventy thousand dollars.
Q. The ten acres with the improvements?
A. Yes, sir.
Q. For how long did you have that on the market?
A. Three or four years.
Q. When was that?
A. In was since 1888; I am not sure but what it was before that time, too.
Q. Then the reason that you haven't sold any large tracts around there is because there has been nobody there to buy them?
A. That is the principal reason.
Q. Do I understand that you know that the stock yards company has an extensive tract of land within a short distance of their present yards which would serve their purposes equally well with the present yards?

Mr. Hite objects to the question as leading.

By the MASTER: It is not shown that he knows anything about the stock-yards business.

Q. Do you know of any tract or plot of ground that is adjacent enough to railroads and railroad facilities to make it useful for stock-yards purposes by virtue of its closeness to the railroads?

Mr. Hite objects to the question as improper redirect examination. Objection overruled.

A. There are four railroads that come in in the bottom there, and there are railroads on each side next to the bluffs and next to the river.
Q. That touch this piece of land you are talking about?
A. Yes; close to it.
Q. You say there is a circular railroad that runs up by it?
1220 A. The terminal.
Q. That touches them all practically?

Objection as leading.

By the MASTER: I think the witness has given a general description of this land. I do not think it necessary to go into a minute description of it.

Q. The terminal road touches this property?
A. Yes.

Q. Now, which property do you have reference to? There are a great many owners of property over there in that bottom. You are speaking of a piece of land down near Armourdale that belongs to the stock yards company?

A. Yes, sir; and you want to know whether the terminal railroad touches that or not?

Q. Yes; how close is the terminal?

A. I think it is about three hundred yards from the switch that they have to the south line of this land. I think it is about that; their main track. There is a bridge across the river right close by their land; the street runs between. I don't think it is over three hundred yards from the switch.

Q. The switches run from the terminal up that way?

A. Alongside the terminal. There is a sand plant in there, and there is a switch that runs into it. The sand plant is between the main line close to it and the switch. I don't think it is three hundred yards.

Q. Is there a railroad connection between the terminal road and this land?

A. The terminal reaches the two railroads that come in.

Q. You can go from the terminal road down on the road that touches this land, then?

A. Yes, sir.

Q. You say the land is fully adapted for pen purposes—for building pens?

A. Yes, sir.

Q. How extensive is that tract?

A. I don't know how many acres they have there. It is quite a large tract of land.

Q. Sixty or seventy acres of land?

A. Yes, sir.

By the MASTER: Is not this the land to which Colonel Morse testified fully?

By Mr. HITE: Yes, sir.

1221 And in answer to further cross-interrogatories propounded to him by D. R. Hite, counsel for the complainants, the witness testified as follows, to wit:

Q. Do you know anything about operating stock yards, Mr. Merrill?

A. No, sir.

Q. Do you know anything about operating railroads?

A. No, sir; never was in the business.

Q Do you know anything about operating packing-houses?

A. Never was in the business.

Q. Do you know whether or not the yards of the Swift Packing Company run up to the quarantine yards or not; don't the*t* adjoin them on the west?

A. A switch adjoins the quarantine yeard on the west. There is a railroad in there. I think the Union Pacific has a right of way,

and there is a viaduct right over it. They practically join the quarantine yards on the west.

By Mr. LITTLE:

Q. You stated that you knew they purchased the land we have been talking about for stock-yards purposes?
A. No, I didn't. I don't know what they purchased it for.

Witness excused.

1222 C. D. PARKER, a witness produced by the defendant L. C. Boyle, as attorney general of the State of Kansas, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to direct interrogatories propounded to him by Mr. Boyle, testified as follows, to wit:

Q. Where do you reside, Mr. Parker?
A. 2623 Independence boulevard.
Q. In this city?
A. Yes, sir.
Q. What is your age?
A. 43.
Q. How long have you lived in Kansas City?
A. 'Bout ten years.
Q. From what point did you come to Kansas City?
A. Illinois.
Q. What part of Illinois?
A. Fulton, Whiteside county.
Q. In what business are you engaged?
A. At the present in the real-estate business.
Q. Alone or with a firm?
A. C. D. Parker, Durfee & Company is the firm.
Q. How long have you been engaged in that business?
A. About nine years; it is a little over nine years.
Q. Do you hold any position in the real-estate exchange here?
A. Not at present.
Q. Have you?
A. Yes; I have been president of the exchange for one year.
Q. How long ago?
A. Two years ago; my term expired a year ago last month.
Q. Do you hold any positions in any corporations of any sort?
A. Director in the Mechanics' bank.
Q. How long have you been a director in that bank?
A. About four years.
Q. About how extensive has been your business as a real-estate dealer in this city?
A. It runs from a quarter to three-quarters of a million dollars a year.
Q. In different parts of the city?
A. Yes, sir.
Q. Any of it in Kansas City, Kansas?

A. We have plenty of property listed over there, but we have not made very many sales.

Q. Does your business extend over into Armourdale?

1223 A. Yes, sir; we have property over there.

Q. In the neighborhood of the stock yards?

A. Yes, sir.

Q. And in Kansas, in the neighborhood of the north yards?

A. Yes, sir.

Q. And on the west side of the Kaw river?

A. Yes, sir.

Q. Are you familiar with the values of real estate in all the parts of the city you have described?

A. I think I am.

Q. We will take on the west side of the Kansas river, the tract that has been described as C. Do you know the value of real estate in that vicinity?

A. Yes, sir.

Q. Are you able to estimate the value of the naked land in C?

A. Yes.

Q. How m-ch is it worth per acre?

A. $10,000 per acre.

Q. Are you acquainted with the tract described on the map as D?

A. Yes, sir.

Q. Has that any improvements on it?

A. No, sir.

Q. How much would you say that land is worth per acre?

A. About $3,500.

Q. Are you acquainted with the values of land in the vicinity of the north yards?

A. Yes, sir.

Q. Are you familiar with the tract marked E on the map, east of Water street?

A. Yes, sir.

Q. In your judgment, what is that land worth per acre?

A. $17,500.

Q. Do you know the sand bar down on the river bank west of Water street?

A. Yes, sir.

Q. Are there any improvements on it?

A. No, sir.

Q. What is the character of that ground?

A. It is below grade 12 or 15 feet, I should judge.

Q. What is that land worth per acre?

A. $3,500 per acre.

Q. Are you acquainted with the value of the tract marked B on the map, being that portion of the main yards in Kansas?

A. Yes, sir.

Q. What do you think that is worth per acre?

A. I should say about $22,500.

Q. Are you acquainted with the tract of ground marked A, lying in Missouri?

A. Yes, sir.

Q. How much is that land worth per acre?

A. $37,500 per acre.

1224 Q. Are you familiar with the tract of land marked State Line Improvement Company south of the stock-yards property?

A. Not well enough to testify about it.

Q. I would be glad to have you look at that land at an early day. Are you acquainted with a tract of land that is described as beginning at the intersection of the south line of 6th street with the east line of Ewing street, in Kansas City, Kansas; thence south along the east line of Ewing street 352.5 feet to the northwest corner of lot 62, on Ewing street; thence northeasterly at right angles with Ewing street 309 feet to the west line of State street; thence north along the west line of State street 144 feet to the south line of 6th street; thence west along the south line of 6th street 439.5 feet to the place of beginning.

A. Yes, sir; I do.

Q. Do you know its value?

A. I think I do.

Q. What is it?

Mr. Hite objects to the question as incompetent, irrelevant, and immaterial. Overruled.

A. From 25 to $30,000 an acre.

Q. Why do you place that at a higher valuation than E?

A. Because it fronts on the cable line, and all that part of the tract along there is business property and is being used as such.

Q. How is it situated as to switch-tracks?

A. Very well; switches on both sides of it. There is a switch running up into the center of the tract and also from State Line street, and it is susceptible of being put into entire switch property.

1225 And in answer to cross-interrogatories propounded to him by D. R. Hite, counsel for the complainants, the witness testified as follows, to wit:

Q. Do you — anything about the stock-yards business?

A. Well, I have had just a little experience, but not much. I have been in the stock-yards business part of my life.

Q. In Illinois?

A. Yes, sir; I know something about the charges.

Q. You know something about the charges?

A. Yes, sir.

Q. Do you know anything about what it costs to operate the Kansas City Stock Yards Company?

A. No sir.

Q. Do you know anything about the extent of its revenues?

A. No, sir.

Q. Do you know the character of the structures that are upon these tracts A, *b*, *c*, D, and E that you have been testifying about?

A. In a general way.

Q. In placing the valuations on these tracts A, B, C, D, and E did you take into consideration the use to which this land is being put by the stock yards company?

A. No, sir; we took into consideration the prices of property adjacent to the stock yards, together with the surroundings.

Q. Am I right in concluding that you did not consider the value of the use to the stock yards company in making up your estimates of the value of these lands?

A. Not altogether.

Q. You don't know anything about the value of the use of that land for stock-yards purposes?

A. No, sir.

Q. Did you take into consideration in making up your values on A, B, C, D, and E the value of the property for use as railroad terminals?

A. What do I understand by terminals, Mr. Hite?

Q. Where the railroad companies have their warehouses and freight yards and where they make up their trains?

A. Yes, sir.

Q. You took that into consideration?

A. Yes, sir.

Q. I call your attention to the tract of land lying north of B and south of E that is now occupied by the Missouri Pacific and Union Pacific railroads for terminal facilities, and will ask you to state to the special master what the value of that tract of land is for
1226 the purposes for which it is being used per acre.

A. I should say about twenty thousand dollars an acre.

Q. In making up your estimate of twenty thousand dollars an acre upon that property, do you take into consideration what it cost the railroad companies or what they could duplicate their purchase for a thousand or two thousand feet north or south?

A. Partly so; yes, sir.

Q. Is it your opinion, Mr. Parker, that the Union Pacific and Missouri Pacific Railway Companies could purchase the same amount of land that they now have in relatively the same situation for twenty thousand dollars an acre?

A. I don't know, I am sure.

Q. Id there any body of land there of relatively the same quantity that thes- railroad companies could buy?

A. Right in that same neighborhood?

Q. In that same neighborhood.

A. Yes; there are two blocks of land east of the land that can be bought, I suppose. I have no doubt, however, they would be help up there. I can sell them some in there myself.

Q. Is there any such quantity as they are now using for their yards that could be purchased in that same vicinity?

A. I don't know that amount.

Q. If you were to receive a commission to buy 25 acres of land

for a railroad company or for any other purposes in this vicinity, as a real-estate man, familiar with these bottoms, could you fill the order with 25 acres of land that would afford facilities equal to those afforded by the present location of those yards?

A. I don't know that I could.

Q. Your best judgment is that you could not, Mr. Parker?

A. I said that I don't know that I could. I would be willing to try awfully hard.

Q. You would be willing to try it?

A. Yes, sir.

Q. Now, suppose you received such a commission as that. How would you start about getting that land; where would you go?

A. Go to the people who had it to sell. I might go in an indirect way. I probably would.

Q. Of course you would. Do you know of any person or number of persons who has 25 acres of land for sale in the west bottoms that would be an equally good location as this is for railroad yards?

1227 A. No, sir; I don't; not in that neighborhood.

Q. That being the case, Mr. Parker, take, for instance, the Chicago, Milwaukee & St. Paul Railway Company. If it should conclude that it was to its interest to go into those bottoms and buy 25 acres of land, do you think it could do it at twenty thousand dollars an acre?

A. No; but I think they could condemn it at that.

Q. Where would they start in to condemn such property? But I will suppose they started in to condemn 25 acres of the stock yards company's property off of the north end of A and B. If you sat upon the jury to award damages for the taking of that land, would you put it in at twenty thousand dollars an acre?

A. I think it would be physically impossible for them to condemn the stock yards property.

Q. There is no legal objection in the way?

A. None at all; but I don't think they would be foolish enough to undertake it.

Q. Where else in that vicinity could they find any such a body of land?

A. There is no such property, except west of the stock yards, that is available right near that point for such purposes.

Q. Now, suppose they went down four or five blocks east and tried to get in that way, they would get into the wholesale district?

A. No, sir; they would strike into the tracks of all the different railroads that run in there. The wholesale district is north of that point.

Q. The wholesale district would be somewhere north and east of there?

A. Yes, sir.

Q. Suppose they went in there to condemn 25 acres and you sat on the jury——

A. It would not be practicable; it could not be done.

Q. They could not buy it for any price that would be within reason, could they?

A. No, sir; there is a little tract, quite a tract of ground, northeast, right down by the elevator—I can't think of the name of it—there is quite a little tract of ground right in there that is vacant. It is quite a little tract of ground, and can be gotten at about the rate I told you—that is, it could be condemned at that figure easily.

Q. At about twenty thousand dollars an acre?

A. Yes, sir.

Q. Where does it lie with reference to the stock yards property?

1228 A. Part of it is owned by the Coates estates; it lies way northeast of the stock yards.

Q. If the railroads should go in there——

A. It is a very nice place for them to go.

Q. They would have to pay about twenty thousand dollars an acre?

A. I should say it could be gotten at about that rate; it might be five thousand dollars higher; I could not say.

Q. Somewhere in that vicinity?

A. I know the cracker factory paid one hundred dollars a foot for their ground right in that corner.

Q. How far is that from E?

A. It is about 7 blocks east of E. It is a very much better *b*eighborhood, so far as wholesale business is concerned.

Q. Now, from what you have said, Mr. Parker, I am led to the conclusion that it is your judgment that the amount of land within the immediate vicinity of the packing industries, the wholesale industries, the railroad terminals, and the stock yards is very limited. Is that true?

A. Yes, sir.

Q. Now, suppose another stock yards company should desire to procure fifty acres of land for stock-yards purposes within that vicinity, and equally as advantageous as A and B. What, in your judgment, would they have to pay fer such property? I know that is a difficult question.

A. Of course it is a difficult question, from this fact: it would be a question as to whether I should consider this side of the river or the other side of the river as most advantageous. If you go on the other side, you can buy all the land you want for ten thousand dollars an acre. If you come on this side of the river, there would be no available land that would be as advantageous for the business as the present stock yards.

Q. I will ask you, then, if you consider that the west side of the river, everything being considered, is as available for stock-yards purposes as the east side, as the packing-houses and railroad terminals are located here?

A. That is a very hard question for me to answer, to tell the truth. Of course, Schwarzschild & Sulzberger and Swift & Company are on that side of the river; the dessic-ating plant is there, and

here is talk, at least, that the Kingan packing plant is to be started up again. They are all on the other side of the river, but
1229 the railroad facilities are very largely here—that is, the large terminals.

Q. Now, the largest packing-house——

A. The largest packing-house is on this side of the river.

Q. If another stock yards company should endeavor to buy land on the west side of the river they would have to go west of these packing-houses you have named?

A. Partly.

Q. They would have to go a very considerable distance of where these large packing-houses are located, and clear away from the railroad terminals?

A. The question of railroad terminals comes in there again, and we might as well settle that question between you and me before we go any further. There is really only one terminal in the west bottoms, and that is the Union Pacific; the rest of these roads simply run through here. For instance, it is said that the Santa Fe has reduced Kansas City to the condition of a whistling station; they whip around on a spur and come into the city and right out again to the east; the Rock Island comes in on the Burlington tracks from the east and over the Union Pacific tracks from the west; the Kansas City, Pittsburgh & Gulf has its terminals in the east bottoms; the Chicago, Milwaukee & St. Paul has its terminals at Grand avenue.

Q. Do you know how much land in the west bottoms the Kansas City, Fort Scott & Memphis Railway Company owns, occupies, and uses in the west bottoms for its yards, freight-houses, and railroad shops?

A. No, sir; I don't.

Q. It is in the west bottoms?

A. I may have missed that road.

Q. Calling your attention to the Santa Fe road, is it not a fact that its yards, warehouses, freight depots, tracks, and switches occupy all the land between the yards of the Kansas City, Fort Scott & Memphis Railway Company and Liberty street?

A. I think that is right, but I don't know it to be sure about it. I know they have a lot of ground in there, but I don't know the proper description of it by metes and bounds.

Q. Now, is there not a railroad company that has its round-house, yards, and freight-houses east of the Union depot, between that and the bluffs?

A. East of the Union depot?

Q. The Wabash is there, is it not?

1230 A. Oh, yes; that is right; their round-house and part of their yards is north and east of the Union depot.

Q. How about the Hannibal & St. Joe? Haven't they had their round-house and freight yards in there for 20 years?

A. I made the statement in the start that we had switches, but that they were not terminals.

Q. Referring again to the question which I asked you about the

west side of the river: if a stock yards was located over there on the west side of the river, as you say, they would be partly west of the packing-houses that you named on the west side of the river, and they would be quite a distance from the railroad yards, wouldn't they?

A. Yes; but not so far from the belt lines, especially one of them.

Q. With reference to a belt line: its business, as I understand it, is to act as a connecting link between the various railroads; is not that true?

A. Yes, sir.

Q. That is their business?

A. Yes, sir.

Q. And they make a charge for the transfer of cars, do they not?

A. Yes.

Q. That is done in all instances, as I understand it, with incoming freight. There is a switching charge unless you are fortunate enough to be located upon the line which brings in the freight. I am speaking now of the wholesale business; unless you are fortunate enough to be located upon the line of the road you must pay switching charges?

A. Yes, sir.

Q. Now, live stock that come into this market would have to be switched to the yards over the belt line, and there would be an additional charge for that switching as against a delivery made directly by the road bringing in the stock, as in the present location of the yards?

A. That is as I understand it.

Q. If the stock yards were located west of the river, that would be a disadvantage which you would take into consideration?

A. Yes, sir.

Q. Am I correct in concluding, Mr. Parker, considering all the circumstances, that it is your judgment that the present location of the stock yards is the most available for their purposes?

A. I think it is.

Q. And if another stock yards company should come in, do you think it could procure as desirable a location in the bottoms?

A. I don't think it could.

1231 Q. That being the case, Mr. Parker, am I right in concluding that in your judgment the present location of the Kansas City stock yards is peculiarly well adapted for their purposes?

A. With the surroundings; yes, sir.

Q. You heard Mr. Whitehead testify about the value of his property on Troost avenue, did you not?

A. Yes, sir.

Q. Do you think that property is worth forty dollars a front foot?

A. No; I do not.

Q. Do you think Mr. Whitehead would put a valuation of forty dollars a foot on it if it did not belong to him?

A. Yes; I do. I think Mr. Whitehead is entirely honest in his valuation of the property. It is held at from thirty to forty dollars

a foot out there. I should place the value at five dollars less than Mr. Whitehead; in that neighborhood.

Q. Why do you say in that neighborhood? Is it not a good neighborhood for dwelling purposes?

A. Pretty fair; yes, sir.

Q. And for that reason it is valuable for dwelling purposes?

A. Yes, sir.

Q. Would it be valuable for manufacturing purposes?

A. No, sir.

Q. But it is valuable for dwelling purposes?

A. Yes, sir.

Q. Now, when you value real estate, don't you always examine it with reference to its adaptability for the use to which it is being put or may be put?

A. Yes, sir.

Q. And still you say you did not take into consideration the value of the use of this property by the stock yards company?

A. Not altogether.

Q. You don't know anything about the value to the company of its use, do you?

A. Only by hearsay.

Q. Do you think that the site of the Kansas City stock yards would be as valuable to another stock yards company as it is to this one?

A. I couldn't say.

Q. You don't know anything about that?

A. I dont know anything about it.

Q. So that, in considering the value of the tracts A, B, C, D, and E, you excluded from consideration the possibility of purchase by another stock yards company, did you?

1232 A. Not altogether.

Q. You don't know what a stock yards company could afford to pay for that site, do you?

A. No, sir.

Q. But you think it is peculiarly well adapted for that purpose?

A. I think it is well located.

Q. Referring to Troost avenue, you know what a person could afford to pay for that property for dwelling purposes, do you not?

A. I think I do.

Q. Now, referring to the Emery, Bird, Thayer & Company corner, in considering the value of that property would you take into consideration its value to anybody who desired to go into the retail business in the great retail district of the city?

A. I would taje into account all the conditions that exist in that neighborhood and the location of the property in placing a valuation upon it.

Q. Now, if Emery, Bird, Thayer & Company wanted to sell their property and asked you to put a value upon it, wouldn't you take into consideration the value of the use of that property by any other enterprise exactly similar to Emery, Bird, Thayer & Company, as a retail ladies' store?

A. As I understand it, if they were wanting to sell their business today——

Q. Their site up there, whoever owns it. They do not own it, I believe.

A. The elements you have mentioned would enter into the value, of course. The rental value of the property would enter into the question, and I would like to explain myself at the proper time.

Q. Go right on at any time you please.

A. I can cite you to instances in this town where sales have been made based upon the rental value of the property. I have in mind one sale on Main street in which the sale was made on the basis of a guaranteed per cent. on the money invested for a term of five years.

Q. Ground rent?

A. Yes, sir. The property was sold on the guarantee that it would earn a certain per cent. for a term of years. Again, I have another piece of property put into our office with the guarantee of six per cent. interest on a certain amount of money invested—
1233 that is, *the* they would buy the property and allow them to occupy it, and they would take a lease on it and guarantee them six per cent. interest. That has been within the last eight months. In the meantime that firm has failed, and the lease would not be worth anything, and yet the transaction might be quoted here today as having been made on that basis; so that when you are valuing property you cannot always value it by the occupancy nor by its rental value of today, nor can you take any one thing and make up your judgment upon that. It is the whole surroundings and the locality of the property and the availability of it for the purposes for which it is being used, together with the amount of rent that it is bringing in—a great many elements of that character enter into the value of real estate, as any one with experience will soon find out.

Q. In other words, one man will fail to pay rent on which another man would grow rich?

A. In this case I rented this property south of 12th street to a firm that came from Atchison, Kansas. They started in there with a blow of trumpets and so forth, and the rent, you understand, was fifty or seventy-five dollars a month less than the parties that sold the property had to pay under their guaranty, and they went in there and started in business and in a very short time failed; and, to tell the truth about it, I don't really know whether the building is occupied since or not—I think it is, though—and they have had to take care of that guarantee during that time. A man can't figure entirely on the basis of rental value; other things must be considered also.

Q. Mr. Parker, the fact that the rental of property has remained stable during periods of violent fluctuation—does that measure the value of the property; is that true?

A. Yes, sir.

Q. But if this property south of 12th street had been sold on a guaranty that it would produce a certain income and for twenty-

five years a business had been carried on in it that had regularly produced such an average income as justified the guaranty, wouldn't that be very persuasive evidence to your mind as to the value of that property?

A. Not the business.

Q. Not the business?

A. No; not the business. I cannot concede that the business enters into this question at all—I do not mean that exactly,

1234 but I do mean this: that the business may be profitable, very profitable, for certain reasons, any place in this town. In other words, Carnegie might move his works to the east bottoms and manufacture steel armor for the United States Government. That business would be very profitable in Kansas City; maybe more so at Homestead—I don't know as to that—but it would be very profitable here because the Government would have to pay that much more for the armor.

Q. Now, Mr. Parker, suppose that there is a location about as it is at 11th and Walnut, that is peculiarly adapted for the profitable carrying on of certain classes of business; then when you find that the location of the real estate by reason of its adaptability is being used for that purpose, then you would consider the use, the profitable use, that is made of it as one of the elements that enters into its value, would you not?

A. I think it is no particular harm to 11th and Walnut to have such firms as Emery, Bird, Thayer & Company located there and doing business there. I think it assists the property in that vicinity and makes it more valuable because of the concentration of business, but at the same time you have got to take into consideration the fact that Doggett is at this end of what we call Petticoat lane, and that Taylor is right at the head of it, and Browning, King & Company is there. They are all there in one group, and you can't pick out any one piece of property and show that by reason of their being there that one piece of property is more valuable than the other, but it is the concentration of business that makes that property valuable on Main between 8th and 12th. It falls very rapidly after you leave 12th, going south.

Q. And it falls very rapidly after you leave 8th, going north?

A. Yes, sir; that is what some of us call the Bowery, north of 8th street.

Q. Referring to the bottoms again: the values fall very rapidly as you move west, do they not?

A. Well, no. For instance, within one block we have one piece of property that is held at $150 a foot, and we have another 25 feet that we could deliver, the last I knew anything about it, at $1,600. We have another piece right opposite that we can deliver at $1,800, 25 feet.

1235 Q. Is that property vacant?

A. No; it is occupied by about the same class of buildings as the property down there generally. One man says, Something is going to strike me, and I am going to hold on. Another says, I am ready to sell out and get out; I am satisfied to take that price.

Q. One is a speculator and the other fellow is disgusted and wants to get out?

A. No; one fellow wants to sell his property and would be very glad to do it.

Q. And somewhere in between those two fellows is the real value of that property, is it not?

A. Very close to it; yes, sir.

Q. The land there is not worth any more intrinsically than it is four or five miles further up the river?

A. No; not the dirt.

Q. Then it must be because there is some value attached to the property in consequence of its adaptability to some purpose?

A. There is an expectancy there.

Q. Then when that expectancy ripens into actual use, then are you going to measure the value of that land by that actual use or not?

A. I think if they will deduct what they pay in interest and in taxes, general and special, between that time and this that they must just as well sell their property in the first place and be done with it.

Q. I call your attention to the tract marked B, and ask you why you make the difference between that tract and A?

A. The tract B is on the river and must be kept up. It is not as nice a tract nor in as good shape as A; it is an irregular, triangular-shaped piece.

Q. Those are the considerations?

A. I took that into consideration in valuing it. At the same time Mr. Allen, Mr. Whitehead, and myself differed a little in regard to that tract B, because you will notice that I valued it higher than any other witness for the State.

Q. Is there *is* any question in your mind but that the tract B is just as available for stock-yards purposes as the tract A?

A. I don't know that there is any difference except as I stated to you, the stock-yards people, or whoever occupies it, have got to keep up the improvement down there on the river.

Q. If the cost of that improvement has been charged up against B, why *it is* an additional expense that has to come out of
1236 the revenues that B affords?

A. It would if B was the only piece they owned.

Q. I say if the improvement is charged up against B?

A. Yes, sir.

Q. Then it would come out of the revenue that B affords?

A. Yes, sir.

Q. Those are the considerations that induced you to put a lower valuation on B than on A?

A. Yes, sir.

Q. So far as you know, there is no difference between the value of those two tracts for the purposes for which they are being used?

A. Not so far as I know.

Q. I call your attention to the tract of land lying across the Kan-

sas river, known as the Splitlog tract; what do you think that property is worth?

A. I would have to go and examine it in order to testify intelligently; in a general way, I know something about it.

Q. Do you know of any sales down there?

A. Not of late.

Q. Do you know of the purchase by the stock yards company of these tracts marked *e* that lie north of the tract marked E?

A. I know something about the purchase.

Q. Do you know anything about the prices paid for them by the stock yards company?

A. I know they paid some pretty good prices in there.

Q. That land that they purchased in that part of the bottoms is well adapted to their use, is it not, in consequeace of the location of the packing-houses and railroad facilities?

A. Yes, sir.

Q. Would you judge the value of land by the necessities of some person who lived near it?

A. How is that, Mr. Hite? I didn't quite catch the question.

Q. Would you judge the value of land by the necessities of some person who lived near it for more land?

A. I would not; a person might die or go out of business.

Q. If you owned a lot down there next to the stock yards and you had a pretty shrewd idea that they were going to buy in that direction, you wou d hold it up at a pretty stiff price, wouldn't you?

A. I would take care of my interests the best I knew how.

Q. You would not expect them to pay any more than the land would be worth to them, would you?

A. That would depend upon the situation.

1237 Q. If you knew that they could afford to pay thirty thousand dollars an acre, and that their business was in such a situation that they could not move it, and they had to extend out to accom-odate the growth of their business, and you knew that they could afford to pay thirty thousand dollars an acre because they could get an income on that amount from their business, wouldn't you hold your land at about thirty thousand dollars an acre?

A. I might hold it at thirty thousand dollars an acre, whether I knew they could afford to pay it or not.

Q. Suppose you knew they could afford to pay thirty thousand dollars an acre?

A. I would certainly hold it at that figure if I knew they could afford to pay it.

Q. And would not that be the potential value of that land?

A. I don't know whether it would.

Q. I will change the question and ask you if that would not be the market value of that land?

A. If I had such a lot and knew you had to have it and would pay that price for it, it would be worth that.

Q. But if you knew that the company could afford to pay thirty

thousand dollars an acre for land because the situation of its business was such that it could move its plant with the loss of advantages which you were able to perceive and appreciate, and the growth of its business was such that it could afford to pay thirty thousand dollars an acre for the land it needed, would not that be a very persuasive element in your mind in getting at the market price of that piece of land?

A. Of my piece; yes, sir.

Q. And if you knew that the purchaser could afford to pay thirty thousand — an acre for it, you know that all the other acres he had were worth thirty thousand dollars an acre, would you not?

A. No.

Q. Point out the distinction.

A. He might have been shortsighted in buying his plant originally. Don't understand me to say that the stock-yards people have been shortsighted at all; their business has grown; I understand that; his business might have grown to such dimensions that it required more room, but the fact that he has to pay a fancy price for a lot that he must have does not fix the value of every lot in the plant.

1238 Q. That is not precisely what I am getting at. The question was that, assuming he knew that he could afford to pay thirty thousand dollars an acre, and that his business was extending and would eventually have to take in that acre, if he could afford to pay thirty thousand dollars an acre, wouldn't that be because his land was worth thirty thousand dollars an acre?

A. It would if his business demanded more room, and in order to get more room he could afford to pay thirty thousand dollars an acre for it, for that one tract, but he wouldn't want any more at that price.

Q. That is, he might not want any more at that time?

A. That is like renting space in the building; the demands may be such that one man can afford to pay a great deal more than any other man could for the same space, and by reason of that he takes the space and pays the price.

Q. Now, Mr. Parker, if that is your best judgement, I don't want to disturb it, but I want to point out to you the fallacy of it. Suppose you had ten thousand bushels of corn.

A. Yes, sir.

Q. That you paid fifteen cents a bushel for it.

A. Yes, sir.

Q. And in a month or two you have got to have more corn, and you go into the market to purchase it and you have to pay twenty cents a bushel for it. Is not the corn you have worth twenty cents a bushel?

A. Well, I do not see that that applies; in the one case you are dealing with a product; in the other case you are dealing in real estate. If you have a hundred thousand bushels of corn today or a hundred million bushels of corn and I have, say, twenty million bushels, and you want to corner the market, and you come to me and I say, Hite, you can't have it unless you pay me 20 cents a

bushel for it, then I will say it makes all your corn worth twenty cents a bushel or maybe 25 cents a bushel. Here is a case where you have a plant and I own a lot of ground that you need to square out your plant on which to build a packing-house, say. That is as I understand the question.

Q. No, sir; I do not mean the Shephard case down there, where he held the company for a thousand dollars a foot.

A. That is what I am getting at.

Q. Of course, they will extend in the direction that it is
1239 cheapest for them to extend?

A. Sure.

Q. There is land all around them?

A. Yes, sir.

Q. They will extend in the direction it is cheapest?

A. Yes, sir.

Q. When I ask you if they can afford to pay thirty thousand dollars for any land that lies all around them—no man can have a corner on all the land around them?

A. I understood that you separated out one piece of property that the man could afford to pay thirty thousand dollars an acre for.

Q. Now, I will ask you this question: If the stock yards company for the last ten or fifteen years has been in such a situation that it could afford to pay thirty thousand dollars an acre for lands all around it, in any direction, wouldn't that fix or have a very strong tendency to fix the value, the market price of the land which they intended to buy, to the shrewd business man who saw and appreciated the growth of things?

A. I will answer that question, if you permit me, by asking you a question. If they paid thirty or forty thousand dollars an acre for the land that they bought last and then quit buying, after they had all the land they wanted and were no longer a purchaser on the market, and I could sell a piece of ground within a block for twenty-five thousand dollars an acre, would you think that the value that they paid for their ground would apply to all other ground?

Q. I am inclined to think I would not.

A. I guess that answers it as well as I can.

Q. Now, Mr. Parker, where the stock yards company has extended its yards over here on the north, so far as you are able to judge from the configuration of the land down there, there wasn't any more necessity for extending to the north than there was to the east, was there?

A. Well, no; except that I think it was the proper thing for them to do to grow towards the big industries.

Q. They could have grown towards the big industries nearly the same by going east, couldn't they, in the radius of a couple of blocks?

A. No; I don't think it would have been practicable at all to go east, because the ground is higher priced as you go east.

1240 Q. The upshot of that is they would buy where they could buy the cheapest?

A. Yes, sir.

Q. That being the case, would it not have a tendency to establish the market price of the land they did buy when you recognize the fact that they bought where they could buy the cheapest?

A. We just differed a little on the tracts marked *c* over there. I put that at the same price as the other, but there is a little game of hold-up in there; there is no question about it in my mind. So far as I am personally concerned, I would like to see the stock yards get it at a good deal lower figures than I think they can buy it for.

Q. But they haven't been able to buy any land over there for less than thirty thousand dollars an acre.

A. I guess that is right, but I don't know that.

Q. Assume that it is a fact—and it is a fact—that they have been compelled to pay in the neighborhood of thirty thousand dollars an acre. Now, then, you think there is $1,500 per acre hold-up in there, do you?

A. I do.

Q. Do you think a railroad company could have purchased it for any less?

A. By condemning it, I do.

Q. Do you think they could have gotten it for $12,500 less?

A. I certainly do. I could never have put a figure of $37,500 per acre on it, and I can't see for my life why it should be worth that even—the figure I have put on it—when it comes down to that.

Q. Unless it is by reason that the stock yards company makes — of it.

A. That is it exactly; the use which they can make of it.

Q. Now, you have placed a valuation of $3,500 an acre on the piece of land lying west of Water street. What would it be worth in your judgment, if it was filled up to the grade of E?

A. With riprapping and all?

Q. Yes.

A. If riprapped, I should give it the same value.

Q. It would be worth $17,500 an acre?

A. Yes, sir.

Q. I call your attention to the tract marked D and ask you what it would be worth if it were graded up to the level of C.

A. Riprapped?

Q. Yes.

A. The same price.

1241 Q. Now, will you explain why you make a difference of five thousand dollars an acre between E and B?

A. Yes, sir. B is nearer to the wholesale business in the bottoms the cable lines run to it; it is nearer to the best part of the business in the bottoms and is more valuable ground.

Q. Now, for stock-yard purposes, E, from its proximity to the Armour and Dold packing-houses, ought to be worth as much as B ought it not, in your judgment?

A. I really could not say, but I should think it ought to be. I

is not in as close proximity to the Exchange building. I should — that would make it a little less convenient in the handling of stock. I should think the main yards would be very much sought after. If I was shipping I should want to get as close to the Exchange building as possible.

Q. Do you know and are you able to state what the actual present value, by tracts if you desire to so state it, is of the land marked A, B, C, D, and E, assuming the improvements to be worth sixteen hundred thousand dollars—that is, just as the land stands today—for any purpose, including stock-yards purposes? Are you able to state that?

A. Yes, sir.

Q. Then state what is the value of that property as it stands today for any purpose, including stock-yards purposes.

A. I think the value that I have placed upon it about right. I wouldn't change it.

Q. In other words, it would be sixteen hundred thousand dollars more than you have placed upon it?

A. Yes, sir. Of course, I don't know anything about the improvements.

Q. Now, state, if you can, what is the actual present value of the land for stock-yards purposes.

A. I don't know, Mr. Hite.

Q. Are you acquainted with the extensions of the stock yards east from Bell street to Genesee street?

A. Yes, sir.

Q. You knew the fact at the time?

A. Yes, sir.

Q. You are familiar with the prices paid by the stock yards company for property at that — in a general way?

A. Yes, sir.

Q. Are you familiar with the facts of the condemnation of land by the Rock Island Company at the time it went up Wyoming street?

A. Only by hearsay.

1242 Q. Is there any difference, in your opinion, between the extension of the stock yards in any particular direction, as it might affect values, from the congregation of similar classes of business in the same locality?

A. Only in this way: that the individual or corporation making the extension might choose to take up its bed and walk; otherwise, move their plant.

Q. Do you remember an exodus of certain business firms from the vicinity of 7th and Main to the district on Walnut and Main north of 11th?

A. Yes, sir.

Q. What was the reason of that?

A. One was that the new location is conceded to be a better location for the retail business, the character of the business done by Bullene, Doggett, and those larger firms; another reason was the exorbitant rents which they were required to pay in the old loca-

tion; that entered into —; the owners of the property up there did not seem to know when they had a good thing, and exacted outrageous rents from their tenants.

Q. It is your judgment, Mr. Parker, that the bottoms are conceded to be the best place for heavy wholesale business, for manufactories, for packing-houses, stock yards, and railroads, is it not?

A. Yes, sir.

Q. And it is also your judgment, is it not, that the stock yards company could not find a more available place than they now occupy?

A. Everything considered, I think it is a very good location.

Q. Now, in your judgment, is there any difference, in its effects upon the value of surrounding real estate, between the extension of the stock yards and the removal of the principal firms from the vicinity of 7th and Main to the vicinity of 11th and Walnut and Main?

A. I should say the stock yards can move.

Q. They can move?

A. Yes, sir.

Q. But it is your deliberate judgment, is it not, that it would be a very fatal thing for them to do?

A. No, sir.

Q. Can you conceive of its being a beneficial thing for them to do?

A. It was done in Chicago; they moved the stock yards there, and they came pretty near moving them again.

1243 Q. Do you know anything about the configuration of the land occupied by the Union stock yards in Chicago?

A. Yes, sir.

Q. Is it similar to this?

A. Very nice level ground.

Q. They have plenty of room in that vicinity?

A. They did have when they went there; the city has grown.

Q. That is not a fact with reference to these grounds; the stock yards company could not move without moving the railroad yards and the packing-houses, could they?

A. It is not an impossibility.

Q. Well, they certainly could not move with the readiness and facility that Bullene, Moore, Emery & Company did, could they?

A. I don't think so. I don't know; I think it would, perhaps, be a great deal more fatal to Emery, Bird, Thayer & Company than it would to the stock yards company.

Q. To move from their present location?

A. Yes, sir. I think that was tried when one of the largest firms in Chicago moved onto Wabash avenue; that was Marshal Field & Company—pretty well known, too. They came back to Washington and State, where they were first, and bought ground at fabulous prices; they paid six hundred thousand dollars to the Singer Sewing Machine Company; they were compelled to do it because they regarded that site as great deal better than Wabash avenue. Since

then the prices have gone up faster than any of us can keep track of.

Q. It would not be a difficult matter for Emery, Bird, Thayer & Company to move a block or two?

A. It is owing to which direction they went.

Q. They would get out of that district where the location is so eminently suitable and valuable to them?

A. Yes, sir.

Q. If the stock yards company should move a mile or two away they would get out of the district that is so eminently adapted for their purposes, wouldn't they?

A. I would say that stock yards and a mercantile business are two entirely different things, especially where there is only one stock yards.

Q. Is it not your judgment that if the stock yards company should move to another piece of ground that its present location would be occupied by another stock yards company in an incredibly short space of time?

1244 A. It is owing to what they would have to pay for the land.

Q. Did you consider that proposition?

A. No, sir; I don't know anything about that, I am sure. We did not consider what the land was worth to the stock yards company; we knew nothing about that.

And in answer to redirect interrogatories propounded to him by David Martin, counsel for the defendant L. C. Boyle, as attorney general of the State of Kansas, the witness testified as follows, to wit:

Q. Mr. Hite asked you something about supposing the Chicago, Milwaukee & St. Paul Railway Company wanted terminals over there on the peninsula, somewhere in the vicinity of the north yards. Do you know whether that company has already a location for its depot and terminals?

A. Yes.

Q. Where?

A. Well, it is known as down on South Grand avenue between 20th and 21st streets.

Q. How far is their depot from the stock yards?

A. It would be guesswork; I should say three miles.

Q. In what direction?

A. Southwest.

Q. Clear across the city?

A. Yes, sir.

Q. Where are their freight yards and freight depot?

A. Along about 21st street.

By the MASTER: Give the distance and direction from the yards.

A. Well, as I understand it, it is southeast of the Union depot and the stock yards; it is about due east from the Exchange building of the stock yards.

Q. Located anywhere near the west bottoms?

A. No; not what I could call anywhere close to them.

Q. About how far from the main yards of the stock yards?

A. From the Exchange building?
Q. Yes.
A. It would be guesswork; a mile and a half.
Q. In which direction?
A. Almost due east; it is a little bit south.
Q. How many belt lines are there here?
A. Two.
Q. What are they called?
A. One is the Union Terminal and the other is the Kansas City belt.

1245 Q. Now, do you think of any railroad that runs into Kansas City which has not a connection with these belt lines?

A. I think one or the other connects with all of them. I think one does.
Q. What one is that?
A. The Union Terminal.
Q. How many does the Kansas City belt railway connect with?
A. With nearly all of them; I can't tell exactly.
Q. What is the business of these belt lines?
A. Switching and handling cars coming in on other roads and distributing them and taking them to the different places of consignment.
Q. That is to the different industries?
A. Yes; to wholesale houses and other places of that kind. Suppose a car should come in on the Rock Island consigned to a wholesale house located on the Burlington, the belt line might be called into service to switch that car.
Q. Suppose that the Missouri Pacific brings in a lot of cars for the Rock Island Company to take out, who would perform the service of taking the cars from one road to the other?
A. One or the other of the belt lines, I suppose.
Q. The different roads employ the belt line to make this interchange of cars, do they?
A. Yes, sir.
Q. Do you know how much the belt lines charge per car?
A. I think it — two dollars per car.
Q. Does it make any difference whether the car has to go half a mile or two miles or three or four or five?
A. No, sir.
Q. All the same price?
A. So far as I know; I don't know much about —, to tell the truth.
Q. Do you know where the Santa Fe railroad does its transfer business?
A. No; I don't.
Q. Do you know where the Union Terminal or the belt line receives cars coming in on the Santa Fe?
A. No; I don't.
Q. Do you know of any great railroad terminals at Argentine?
A. Yes; the Santa Fe has very large yards and engine-house at Argentine.

Q. Do you know whether they have platforms for the transfer of freight and things of that sort?

A. Yes, sir.

Q. You spoke about the Kansas City, Fort Scott & Mem-
1246 phis owning a considerable tract of land down there east of the yards. Do you know how much they own?

A. No, sir; I don't; of course, it would be pure guesswork with me as to the number of acres, but it is quite a tract of ground, I should say 50 or 75 acres.

Q. Do you know how much is occupied for railroad purposes and how much is unoccupied land?

A. No, sir; I don't.

Q. Any considerable portion of it unoccupied?

A. I don't know; I am sure about that.

Q. Do you know of any part of it being occupied by private parties for coal yards, offices, and things of that sort?

A. No; I don't.

Q. Something has been said about lands in the vicinity of A and of the purchase down there at a large price; do you know the tract at the corner of 16th and Genesee that Mr. Allen had for sale?

A. Yes, sir.

Q. I believe that the stock yards company bought that at quite a high price; do you know what Mr. Allen had it for sale at; the southwest corner of 16th and Genesee?

A. Yes, sir; I do; I know what he told me he had it for sale at.

Q. How much did he say?

Objection as hearsay. Sustained.

Q. You say that the removal of the stock yards is a possibility and probability?

A. I said it was a possibility; I didn't say anything about the probability of it.

Q. Not of these particular yards, but you know of removals in Chicago?

A. Yes, sir.

Q. And proposed removals there?

A. Yes, sir.

Q. Do you know of a tract of land of several acres near or at least not remote from C, the quarantine yards?

A. Yes, sir; you mean that I have for sale?

Q. Yes.

A. Yes, sir.

Q. How much per acre?

A. Ten thousand dollars; I have a tract owned by Mr. Kelly; I suppose it is owned by him.

Q. How many acres?

A. There is 2 acres in the tract.

Q. Do you know of a 5-acre tract adjacent there?

A. Yes; block 20.

1247 Q. What is that held at?

A. Ten thousand dollars an acre.

Q. What are the surroundings of that property?

A. It has switch-tracks to the east of it.

Q. From what road?

A. The belt line. Then right immediately west of — is Morris & Butts, and south of it this cooperage company across Shawnee street.

Q. What is the adaptability of this 2 and this 5 acre tract for manufacturing and other large industries?

A. I should call it very good indeed for that purpose. Schwarzschild & Sulsberger are right below.

Q. What is the character of the ground?

A. Level; one part of the cooperage ground is a little below grade, but not more than a good basement or excavation.

Q. How about the 5-acre tract?

A. It lies as nearly level as it can be.

Q. This is all in the Kaw valley?

A. Yes, sir.

Q. Do you know of any considerable tract of land in that neighborhood or a little west of it that would be available for stock-yards purposes?

A. I have the Olcutt Packing Company's plant for sale.

Q. How much of a property is that?

A. There is thirteen acres lacking a small fraction of an acre.

Q. Where is it?

A. It is right west of Armourdale about two miles.

Q. How near is it to the lands of the stock yards company which have been described as being near Argentine or west of Armourdale?

A. Well, it is not in very close proximity to that.

Q. How much is that worth per acre?

A. That, of course, has a plant on it; a large packing plant with machinery and all.

Q. What is the price of the whole plant?

A. $35,000.

Q. With all the machinery and improvements on it?

A. Yes, sir.

Q. You spoke about the removal of North, Orrison & Company from some locality uptown here. Do you know how long the building remained vacant after they left it?

A. Well, I should say about two years. I think it was fully that long if not longer.

Q. How long ago was it rented?

A. About a year.

Q. Do you know about what time they moved?

A. About 5 years ago.

1248 Q. You say you think it would be practicable to locate a stock yards in other localities than the one now occupied by the stock yards company?

A. I said it could be done.

Q. As the packing-houses and the railroads are at present con-

structed, I understood you to say that it would be a loss to them to remove from this locality to another?

A. Yes, sir; I think it would.

Q. But if they had located in some other place in the first instance, say two miles west or in some other direction in the city, these conditions about the location of the packing-houses and the railroads might have been quite different?

A. Of course, if, as you say, they had located on the other side of the river, west or south, the railroads might have been different.

Q. And the packing-houses?

A. Yes, sir.

Q. That is to say, the packing-houses were located in their present positions somewhat with the view that the stock yards were in the location that they are?

A. Yes, sir; that is the way I understand it.

Questions by Mr. LITTLE:

Q. Mr. Parker, if you should come into the ownership of a piece of land 25 by 126 feet in the center of the stock yards and the stock yards company wouldn't buy it, what would it be worth?

A. You would have to give me an outlet some way.

Q. Suppose you had an outlet; what would it be worth?

A. I really don't know; I wouldn't want it at any price if they wouldn't buy it.

Q. Wouldn't it be worth anything?

A. No; I don't think it would be worth much.

Q. Could it be used for any other purpose than stock-yards purposes?

A. I really don't know. I don't think it could very well.

Q. Then what is a 25-foot lot, 126 feet deep, in the body of the stock yards, worth for any purpose except stock-yards purposes; nothing, do I understand you?

A. I wouldn't call it worth much.

Q. If the stock yards should build on three sides of a lot 25 by 126 feet, leaving it facing on a street, what would be the result
1249 upon the value of that property?

A. I should regard it as being very much damaged if I owned it.

Q. The location of stock yards in any given vicinity has what result on the usefulness of land in that vicinity for any purpose except stock-yards purposes or some business that is connected with stock yards in some way, like packing-houses, for instance?

A. To a certain extent it makes a nucleus of business around it, such as hotels, saloons, eating-houses, and that class of business, and makes it very profitable.

Q. Dependent immediately upon the stock yards?

A. Yes, sir.

Q. What is the result upon property in the vicinity of the stock yards used for purposes other than those connected with the stock yards, those not dependent upon the stock yards?

A. Good for nothing except small tenants, what we call small

houses, occupied mostly by people who are employed by the packing-houses, stock yards company, railroad companies, and things of that kind at very low rental.

Q. Appropos of the question of high rents: If a property should be used as a house of ill-fame would you regard the large revenue which might be derived from it as any method at all of fixing the value of the property?

A. No, sir.

Q. Then it sometimes happens that the revenues derived from a property is not a correct method of arriving at its value?

Objected to as immaterial. No answer.

Q. Mr. Parker, what is the effect of the location of a house of ill-fame in a neighborhood upon the property, even if the revenue from the property used for that purpose should be very large?

Objected to as incompetent, irrelevant, and immaterial. Objection sustained.

Q. What is the effect upon the value of property in any given neighborhood of the location in it of any business disagreeable in its nature and unpleasant in its surroundings?

A. It is very disastrous to adjoining property.

Q. Then the location of such a business, even if it increased the value of the property for its own purposes, might destroy the value of other properties which it did not utilize?

A. Yes, sir; I should say so.

1250 Q. Have you any information in regard to the overflow of land in the bottoms in times of high water in the Missouri and Kaw rivers?

A. No; I have not.

Q. We were discussing the question of property on the market. If 80 acres of land were thrown upon the market what would be the result on prices as compared with the throwing upon the market of various small pieces of land at a given time?

A. All in the same neighborhood?

Q. Yes.

A. The throwing of the larger tract upon the market would have the effect of depressing the prices of all the rest. The sale of the smaller tracts from time to time would tend to keep values steady.

Q. Suppose the stock yards company, instead of going out and buying small tracts, should throw its entire 80 acres on the market, what would be the result on values?

A. It might depress the value of the rest.

Q. Very considerably, would it not?

A. It would have that tendency.

Q. Are you acquainted with Dr. Flanders' property down there?

A. I think I know the property you allude to. I know the house that stand's there with fences all around it. I didn't know Dr. Flanders owned it.

Q. It faces on what street?

A. Genesee.
Q. How many houses are there on the lot?
A. One.
Q. How many were there on there originally at the time the stock yards company built there?
A. Two, I think.
Q. Do you know what has become of the other?
A. They were both being fast torn down. The last time I saw them the windows were knocked out.
Q. Why was that?
A. I don't know, I am sure.
Q. Unoccupied?
A. Yes, sir.
Q. What revenue is derived from them?
A. I don't know.
Q. Is there any evidence that any is derived from them?
A. Nothing that I can see.
Q. What has been the result of the building of the stock yards on that property?
A. I don't know, except what I see. It has the appearance of the improvements having been badly shaken up.

1251 And in answer to recross-interrogatories propounded to him by D. R. Hite, counsel for the complainants, the witness testified as follows, to wit:

Q. If you had a lot 25 x 125 in the middle of the stock yards, wouldn't you put a hotel or saloon on it and make money?
A. I don't believe it would be a very good location for it.
Q. For a saloon or little hotel?
A. Not right in there; no, sir.
Q. You don't think it would?
A. No, sir.
Q. With reference to this two acre tract of which you spoke, how far is that from C?
A. I think it is two blocks and a half or three blocks.
Q. Is that low land?
A. Well, the character of the ground is a little lower than C.
Q. Doesn't it overflow in high water?
A. I really don't know about that, Mr. Hite. I don't know that it does.
Q. Was it not overflowed this year, Mr. Parker?
A. You mean now?
Q. Not right now, when the water was up?
A. I don't know that it was.
Q. Is it any lower than D?
A. Well, I have no way of leveling across there, but I should say that D is very much lower as it lies now.
Q. If D is just as high as the property you have spoken of, it is worth just as much, is it not?
A. I wouldn't say; this ground is level. There is a drop along this tract D, I should say, 12 or 15 feet below grade.

Q. Has not Armourdale always been overflowed from the Kaw river in high water from above rather than from below?

A. I don't know that, Mr. Hite.

Q. Where is the five-acre tract that you spoke of with reference to C?

A. That is across the street from the two-acre tract, north, right in the immediate vicinity.

Q. Is that low ground?

A. No, sir; it is level with the streets there.

Q. Is it as low as the two-acre tract?

A I should say that the two-acre tract is a little lower of the two pieces.

1252 Q. They have not been riprapped at all?

A. There is no necessity of riprapping; they are inside ground.

Q. Is there a slough that comes up through them there—that five acres?

A. No, sir; I know of none.

Q. You think it is as good land as C?

A. I do.

Q. And that is why you put the same value upon it?

A. Yes, sir.

Q. Is it used and occupied for any purpose now at all?

A. Block 20, or the five-acre tract, has some buildings on it, but I really don't know what the occupancy is, but the two-acre tract is occupied by the cooperage company.

Q. Is the five-acre tract covered with improvements of a permanent character, Mr. Parker?

A. No, sir; I shouls not call them permanent. They are susceptible of being taken down easily.

Q. Do they pay any revenue on a basis of ten thousand dollars an acre?

A. I wouldn't think they would very much.

Q. Referring to this Olcott Packing Company that you spoke of, hasn't all the machinery been sold out of that property, Mr. Parker?

A. The last information I had in regard to it, it had not been.

Q. Wasn't it sold to an ice company?

A. I really could not say.

Q. What is the matter with the packing-house that it don't run?

A. That is something I can't tell you. I know it was started, but I presume it was not profitable.

Q. Mr. Parker, wasn't it too far away from the stock yards?

A. I think it was.

Q. You say it is two miles?

A. I should say fully that.

Q. And has a switch running to it today?

A. Yes, sir; I think either the packing company or the stock yards company owns cars which were used to deliver stock to the packing-house.

Q. It is your understanding that the stock yards company delivered cattle to them out there?

A. Yes, sir; free.

Q. And notwithstanding that the shrinkage was too great to enable them to do business profitably?

A. I couldn't say as to that.

Q. Your judgment is that they were too far off?

1253 A. Something of that kind. I had that packing-house as good as sold once.

Q. Do you know who the Olcutts were, Mr. Parker?

A. Only in a general way.

Q. Were they practical packers?

A. I think that gentleman was a practical man.

Q. Hadn't he been for years with the Armour Company?

A. That is my understanding.

Q. You were asked something about what would be the effect upon surrounding real estate if a body of eighty acres were suddenly thrown upon the market, and you said the effect would be depressing. Are we to understand from your answer that the law of supply and demand regulates these matters just like it does all others?

A. Well, of course, there is a great deal that enters into that question of demand; it comes in very largely.

Q. Take the converse of that. Suppose a man wanted to buy eighty acres of land and could only get a few lots, wouldn't it put up the price of the lots?

A. Yes; if he wanted eighty acres, the eighty acres might become quite valuable by reason of that, if he wanted just that amount.

Q. I mean if he was willing to buy eighty acres there and had to do it by piecemeal wouldn't it put up the price of lots?

A. It would be likely to unless the matter was very judiciously handled.

Q. He would have to hide his final intention?

A. You bet he would.

Q. You were inquired of in relation to switching charges. Don't you know as a fact that the switching charges run from three to five dollars a car?

A. It runs from two to five.

Q. Is not the entire revenue of these belt lines derived from the people who have to have cars switched from their places of business to other roads or from other roads to their places of business; isn't that true?

A. Nit entirely. They locate manufactories along the lines of their roads, and that helps them out somewhat.

Q. But don't they get their entire revenues from the burden which they put upon those industries?

A. Along the lines which they have built they have all kinds of manufacturing industries and plants, coal yards, lumber

1254 yards, and all kinds of business. They help to locate them and do their switching, and that helps them out.

Q. And the amount which these business men are compelled to pay by reason of their situation simply amounts to a burden upon the business to that extent, does it not?

A. Yes, sir.
Q. The entire revenue is derived from that source?
A. Yes, sir.
Q. Do you know that the Union Terminal has a track right along the west bank of the Kaw river in front of D?
A. No, sir; there is a trestle-work there.
Q. They have no track there?
A. I noticed there is a trestle-work through there.
Q. Is not their track on the trestle, the trestle that runs along in front of D?
A. Yes, sir.
Q. Has it come under your observation that the excavation in D was made for the purpose of procuring dirt to put on the land or lots immediately south of it?
A. As to that I don't know; I know that it had the appearance of being overflowed in D.
Q. Is not the river filling up D very fast?
A. I could not say as to that.
Q. It is filling it up?
A. I should judge it was somewhat; yes, sir.

Questions by Mr. LITTLE:

Q. Do you know anything in regard to the condition of the cellars in the wholesale houses in the bottoms?
A. What do you mean, during high water?
Q. Yes.
A. Generally they are pretty good; the basements are very good; it is wonderful how well the bank of the river is protected to keep the water out.
Q. Good embankments?
A. Yes, sir; sometimes in very extreme high water they have trouble, but generally the basements are pretty good.
By Mr. DANA: But they continued right along to do their wholesale business there?
A. Yes, sir.
Q. Good enough location for that?
A. Very good location.

1255 By Mr. LITTLE:

Q. You don't know whether they move their good upstairs in the spring or not?
A. I don't really know of but one or two cases where they did that.
Q. Who was that?
A. It was not general; the manager of the Kansas City Coffin & Furniture Company told me that once since they had been in the bottoms they had been compelled to move up.
Q. How long had they been there?
A. I think something like three or four years.

By Mr. HITE: They still stayed, however?
A. Yes, sir.

Witness excused.

1256 E. F. ALLEN, a witness produced by the defendant L. C. Boyle, as attorney general of the State of Kansas, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to direct interrogatories propounded to him by Mr. Boyle, testified as follows, to wit:

Q. What is your name and age?
A. E. F. Allen; age, 41.
Q. Where do you reside?
A. Kansas City, Missouri.
Q. How long have you lived here?
A. I have been here most of the time since 1876.
Q. What is your business?
A. Real estate and loans.
Q. How long have you been engaged in that business?
A. 15 years.
Q. Are you a member of the Kansas City Real Estate Association?
A. Yes, sir; I belong to the Real Estate exchange.
Q. What position, if any, do you hold in the exchange?
A. I have the honor of being president at the present time.
Q. What is the style of your firm?
A. The Allen Investment Company.
Q. As a real-estate man, Mr. Allen, I will ask you to state if you have ever been called upon to appraise property for different purposes in and about Kansas City.
A. Yes, sir; I have served quite extensively such capacities; served the city as special expert on condemnations of two or its park districts, and also served individuals quite extensively during the past three or four years and appraised several estates and served on condemnation juries generally all over the city.
Q. Have you been called upon in the late park agitation to condemn or appraise property?
A. Yes, sir; I have testified for a great many property-owners on the West Terrace Park and Penn Valley Park.
Q. Are you familiar with the real estate located in and about the Kansas City bottoms?
A. Yes, sir; I am quite familiar with it.
Q. Have you bought and sold property in that vicinity?
A. Yes; I have sold considerable property for other people and acted as agent for people in the locality of the stock yards, especially on this side of the line.

Q. You may state what class of property is necessary for
1257 wholesale houses, manufacturing sites, and that class of industries.

A. The character of property usually sought after for wholesale purposes is property that is so situated that it has switching facilities with the different railroads, and the street approaches are

supposed to be first-class and suitable for heavy drayage; usually that part of the city which is in immediate proximity to the various freight railroad warehouses. That is the class of property that is usually sought by the wholesale houses. As to manufacturing institutions, it depends, of course, a good deal on the character of the institution and the class of good manufactured. If the class of goods manufactured are light and switch facilities are not needed, then a location remote from the business center will answer all proper purposes.

Q. Are switching facilities one of the principal factors that enter into the question of the desirableness of a site for a manufacturing or warehouse plant?

A. Yes, sir; for heavy manufacturing purposes.

Q. I wish you would state to the special master, with the conditions as they now exist in Kansas City for railroad facilities, what districts or portions of the city are available for wholesale houses or manufacturing purposes, as the case might be.

A. We have several quite extensive areas around Kansas City, Missouri, which are available and suitable for manufacturing purposes. It is usual in cities of this class to concentrate the wholesale houses in one district, and the principal wholesale houses of the city at this time are located in the bottoms, on Skile & Western's addition, Depot addition, Seger's addition, and Turner & Company's addition. I believe that embraces all the additions over in the west bottoms. We also have a large wholesale business over on Delaware, Central, and Wyandotte streets, lying north of the Coates house. They also have switching facilities to some of that property. The business done there is for the most part of a lighter character than that done in the bottoms. I mean by that the character of goods handled are of smaller bulk, such as millinery, notions, dry goods, etc. I think those two districts embrace the principal wholesale districts of the city. We have other districts that are
1258 well adapted to such purposes, but, as I have stated, it is the tendency of the wholesale merchants to concentrate their houses in one or two districts of the city. We have large tracts of land in what we call the north bottoms that are suitable for wholesaling or manufacturing.

Q. Where are they with reference to the stock yards?

A. They lie northeast of the stock yards and north of Main street.

Q. How far from the stock yards?

A. I should judge a mile and a half.

Q. You say there is vacant land there?

A. Yes, sir; there is vacant land there with switching facilities. Considerable of the area is occupied at present by manufactories.

Q. What opens up that territory for railroad facilities, Mr. Allen?

A. We have now what we call the terminal road, whose main warehouse or freight depot is at the foot of Wyandotte street, about 2nd and Wyandotte, and the Terminal Belt railway runs around the entire city and connects with all the different railways—that is,

it crosses them and affords switching facilities for all of them. Then, aside from that, there is at the present time the Chicago & Alton and Missouri Pacific railroads, with their yards in the north bottoms east of Main street and extending out from there for a distance of a mile and a half or two miles. In fact, clear out to the Blue river the land lies level and affords a large and suitable area for manufacturing, warehouse purposes, etc. Then there is another tract of land, known as the southern portion of the city, at the foot of Main street and Broadway, which is of quite extensive area, running on the south to the bluffs and towards the stock yards, which is being used somewhat now for manufacturing purposes.

Q. Is there any of that land vacant now?

A. Oh, yes; there is a large portion of it that is vacant, but at the same time it is being noticed by manufacturers, and at the present time there is a number of plants in operation there.

Q. Is there an area of land that is known as the east bottoms that is distinct from the north bottoms?

A. Well, I referred to the east bottoms in saying northeast.

Q. I call your attention specifically now to the stock yards and to the lands that lies in the bottoms in that locality, and will
1259 ask you to state if you have, in your business as a real-estate man, bought and sold property in that vicinity.

A. I have; yes, sir.

Q. How recently?

A. Within the last year I have sold several tracts and been interested in the sale of several; have sold myself two different tracts which I have in mind at the present time.

Q. Have you any property on your books now for sale in that vicinity?

A. Yes, sir; I have quite a good deal of property for sale in Turner & Company's addition, Seeger's addition, Skiles & Western's addition, and Depot addition, and some in West Kansas addition.

Q. I desire to call your attention, Mr. Allen, to that portion of the property of the stock yards company which is designated on the map by the letter C, which is known as the quarantine yards, on the west side of the Kansas river. I wish you would state if you know the value of that land upon which the company has put its improvements; what the land is worth per acre, without respect to the improvements.

A. Yes, sir; I have a correct idea of the value of the land.

Q. State to the special master what, in your judgment, that land is worth per acre?

A. I think that is worth ten thousand dollars per acre.

Q. Calling your attention now to that portion of the land of the stock yards company that is marked D, upon which there are no improvements, do you know what that land is worth per acre?

A. Yes, sir; I have a very correct idea of the ground.

Q. What do you think that land is worth per acre?

A. Three thousand dollars per acre.

Q. I will call your attention to that portion of the map which is marked E, which comprises the north yards of the Kansas City

Stock Yards Company, and ask you if you know what the value of that land is per acre?

A. Yes, sir; I have my idea as to its value.

Q. What, in your judgment, is that land worth per acre?

A. $17,500.

Q. I will call your attention in the same connection to the land, comprising 8.6 acres, lying west of Water street and immediately on the river bank. Do you know the value of that property per acre?

A. Yes.

Q. What, in your judgment, is that worth per acre?

A. About $3,500.

1260 Q. I will now call your attention to the tract marked B on the map, being that portion of the main yards of the stock yards company located in Kansas, and will ask you to state if you know the value of that land per acre.

A. Yes, sir.

Q. State to the special master what, in your judgment, that land is worth per acre.

A. $20,000.

Q. Now, I call your attention to the plot of ground marked A and comprising the main yards of the company in Missouri, and will ask you to state if you know the value of that land per acre.

A. Yes, sir.

Q. What, in your judgment, is that worth per acre?

A. $37,500.

Q. Are you familiar with that tract of land?

A. Yes, sir.

Q. Are you familiar with a tract of land that is controlled by the State Line Improvement Company, which runs south from the south line of the Kansas City Stock Yards Company's property to Turkey creek, and comprises about 39 acres?

A. I am very familiar with the land. I have not examined it closely with an idea of testifying to its value.

Q. Well, would you be prepared to state, from your knowledge of the value of the rest of this land, what this particular tract of land would be worth per acre, without regard to anything that may be on it, but just the land?

A. How far west does it run?

Q. As far west as the State line, east to Libert- street, and south to Turkey creek. Can you give a judgment as to what that land is reasonably worth per acre?

A. I could give my ideas about it without examining it.

Q. What, in your judgment, is it worth per acre?

A. Fifteen thousand dollars an acre, I should judge, would be a liberal valuation on it.

1261 And in answer to cross-interrogatories propounded to him by D. R. Hite, counsel for the complainants, the witness testified as follows, to wit:

Q. You put a valuation on A of $37,500?

A. Yes, sir.

Q. Per acre?
A. Yes, sir.
Q. And on B of $20,000?
A. Yes, sir.
Q. On E, $17,500?
A. Yes, sir.
Q. Land down on the river, $3,500 per acre?
A. Yes, sir; on this side.
Q. And you put a valuation of $3,000 on the tract of land north of the quarantine yards?
A. Yes, sir.
Q. And $10,000 on the quarantine yards, the tract marked C?
A. Yes.
Q. Are you acquainted with real-estate values in Kansas City, Missouri?
A. I think so.
Q. Do you know of any large deals in real estate in Kansas City, Mo., in late years?
A. Yes, sir.
Q. What were they?
A. Well, I have figured myself within the last year on one deal to the extent of $25,000. There have been several transactions of $65,000 and $70,000.
Q. Are you acquainted with the transaction resulting in the present holding of Emery, Bird, Thayer & Company?
A. Yes, sir; I know something about it.
Q. How is that held, Mr. Allen; do they own it?
A. The title to it?
Q. Yes.
A. I think at the time they were located up there that property was bought and held by a syndicate; I do not think they own it.
Q. Do you know how much land is comprised within the tract upon which that building stands?
A. I don't know the exact frontage; no, sir; it runs from 11th street to the alley on the north and from Grand avenue to Walnut street.
Q. What, in your judgment, is that property worth per front foot?
A. You mean to take it as a whole?
Q. Yes.
A. I have not examined it with a view of placing a valuation upon it, but I can tell you in the rough. Taking it as a whole on the 11th Street frontage, I should judge it would be worth
1262 from 1,500 to $2,000 a front foot: of course, the Walnut Street front would be worth more money than the Grand Avenue frontage.
Q. Let us figure on that 11th Street frontage; you think fifteen hundred dollars per foot would certainly be a fair price for it?
A. Yes, sir.
Q. Are you acquainted with the piece of property—that is, where the Citizens' bank owns its property on Delaware street?

A. Yes, sir.

Q. What do you think that property is worth per front foot fronting on Delaware street?

A. I should judge that property on the corner of 7th and Delaware would be worth six hundred dollars a front foot.

Q. Am I clear in understanding you that there is a difference of nine hundred dollars per front foot between the two pieces of property I have inquired about?

A. Yes, sir.

Q. How much frontage on Delaware street has this Citizens' bank; do you know?

A. I don't know; I am putting this valuation on it from the fact it is a corner lot of irregular depth on the northwest corner of 7th and Delaware streets.

Q. What is the lot on the corner of 11th and Walnut, on which the store of Emery, Bird, Thayer & Company's store stands? I will call it the Bullene building.

A. Well, taking the Walnut Street frontage, I believe that property there is regarded as being worth—it depends on the size of the corner, but just take the corner, just a fifty-foot corner lot, I should say twenty-five hundred to three thousand dollars.

Q. Now, take the corner the other way, facing on 11th street; what is it worth that way?

A. The lots don't run that way, you know; it is not the way the lots front; the business would not warrant the fronting that way.

Q. Take the Bullene property fronting on Walnut street and tell me what it would be worth per front foot for the lots next to the corner. Are they worth as much as the corner?

A. No, sir; the inside lots, taken altogether, in that locality, the general rule for scaling the prices of corners and inside lots is a reduction of from 23 to 33% *per cent.* for the inside lots. If you take it in other cities the difference is much greater; take it in Chicago, in the retail district, a corner lot is worth double in market price what the inside lots are worth.

1263 Q. From your experience as a real-estate man, in handling a piece of property like the Bullene tract for retail purposes, you would make an estimate of the value of that property, wouldn't you, per front foot on Walnut street, taking it altogether?

A. I don't quite understand your question, Mr. Hite.

Q. If you were negotiating for the establishment of a retail store upon such a tract as that and were called upon to value that tract what valuation would you put on the frontage on Walnut street, including the inside lots and the corner lot?

A. It would be very natural in appraising a piece of property of that description to take the whole tract into consideration, because there is no longer any particular frontage to that plant, because the alley has been vacated.

Q. In placing a valuation upon the Walnut Street front what do you think would be a fair valuation per front foot for it?

A. I don't know the number of front feet there. If you can give me the exact number of front feet I will tell you.

Q. There are 144 front foot.
A. I should say from eighteen hundred dollars to two thousand dollars a front foot.
Q. You are only taking in half the depth, are you not, Mr. Allen?
A. Yes.
Q. Back to the alley?
A. Yes—that is, supposing there is an alley in the rear of it, and that the lots fronted as they originally did on Walnut and Grand avenue.
Q. Now, what would the same number of feet on Gran- avenue, running back to the alley, be worth?
A. You mean the 94 feet inside?
Q. Yes.
A. I should say about one thousand dollars a foot, taking the 94 feet inside.
Q. Now, suppose you were called upon to appraise that tract of land just as it stands now. To give you a clear idea of what I mean: Suppose that building should burn down tonight and you were called upon to appraise that land for the purpose of a ground-rent lease, for instance, what would you value the piece of land upon which the Bullene store stands? I do not ask or expect an accurate statement, but just from your general idea of the location and the value of the property.
1264 A. You mean to figure up the whole valuation?
Q. What valuation would you place upon it?
A. The frontage on 11th street, I think, is about 240 feet.
Q. Just take it right straight through and give me your best judgment as to the value of the tract, measuring it by the frontage on Walnut street; that would include the corner also, Mr. Allen.
A. Of course I have not gone over this with a view to testifying to the value of that ground, but somewhere in the neighborhood of three hundred and fifty or four hundred thousand dollars.
Q. That would be in the vicinity of two thousand dollars per front foot on Walnut street?
A. On Walnut street.
Q. Running clear through?
A. Yes, sir.
Q. In making your estimate of that kind, considering that piece of property, Mr. Allen, you would not consider one particular foot of that property any more valuable than any other particular foot for the purposes which I have pointed out to you as a retail establishment, would you?
A. For one entire establishment?
Q. Yes.
A. Yes; the Walnut Street frontage would be decidedly preferable to the Grand Avenue frontage, and the corners would be much more attractive than the inside for business—retail business purposes—but take it as a whole—of course I place the valuation on the whole plant.
Q. In placing that valuation upon the whole plant you would

figure that one foot was just as valuable as any other foot to make up the average?

A. No; I should consider so much frontage on each of the corners as being worth so much and the ground to the rear to be of less value.

Q. For their purposes?

A. Yes, or any other purpose—that is, they would not have the advantage of retail display that they had on the corner; certainly the corners are much more valuable.

Q. I call your attention again to the piece of property at the corner of 7th and Delaware, which, as you know, is occupied by a bank. Now, for banking purposes is any one foot more valuable than its neighboring foot?

1265 A. Taking the ordinary width of a bank-room——

Q. If they are figuring on space?

A. No; but if they are figuring on light, the corner is more valuable. Each foot as it recedes from the corner is less valuable.

Q. But they have to have a building and just so much ground with it, and one foot is just as valuable for their business as any other foot, is it not?

A. We do not go into the question of their business at all; we take the ground just as it stands.

Q. Now, leaving the instance I have mentioned and coming to a more general question. Referring to the land at the corner of Walnut and 11th streets, what are the reasons which induced you to put a valuation of nine hundred dollars more per front foot on that land than on the land at the corner of 7th and Delaware?

A. Simply because the general market value is that difference.

Q. What, in your judgment, is the reason that the market value is more?

A. The ground at the corner of 7th and Delaware is in a wholesale district. There is a great deal of vacant property in that district; it is an old part of the city; but down at the corner of 11th and Walnut street you are getting into the very choicest business property that we have in *in* the city.

Q. When you say that it is the very choicest business part of the city, what are the elements which lead you to say and believe it is the very choicest business property in the city?

A. In the first place, its market value, its surroundings, the first-class trade that centers there, and the income-producing feature of the property.

Q. With reference to the income producing feature of the property, Mr. Allen, in making up your estimates of the value of real estate, is that a controlling feature?

A. No, sir; but that enters into it.

Q. I call your attention to the Keith & Perry building at the corner of Ninth and Walnut streets, and will ask you to state to the master whether or not the income derived from that property or a similar piece of property that might be put there is one of the essential elements which would be considered by you in case you had to value that piece of property.

1266 A. That would have something to do in placing a valuation on that piece of property. Of course, you understand that on a piece of property in an entirely new district where the trade is not developed, where the surrounding properties are not improved, people oftentimes place a valuation based on the future. That is a prospective value to a certain extent, and, at the same time, it is the value that the property in the general neighborhood is held at.

Q. Since you have been in the real-estate business in Kansas City, Mr. Allen, has it been your experience that there has been any change in the values of real estate with reference to location?

A. Yes, sir.

Q. Now, I call your attention to the district below 7th on Delaware; do you know of any buildings that are vacant down there—business buildings vacant or partially vacant?

A. Below 7th street?

Q. Yes, sir.

A. There is a great many vacant.

Q. If you were called upon to put a valuation upon such a piece of property as those, would the fact of the failure of revenue enter into your estimate in regard to its value?

A. Yes; some little.

Q. If that property down there should suddenly become revenue-producing, as it was in the earlier day, would you think that the old-time value had returned to the property?

A. That would tend to increase the values, yes; if the property was all rented again.

Q. Now, have you in mind, in speaking of values, the use to which a property is put or may be put?

A. Yes, sir; the general utility of the property enters very largely into the question of its value.

Q. Are you acquainted with the business of carrying on a stock yards?

A. No, sir; I don't know anything about the plan of their business at all.

Q. Do you know anything about the expenses?

A. No, sir.

Q. Of conducting the stock yards?

A. No, sir; I have no knowledge of that business.

Q. None whatever?

A. No, sir; nothing only in a general way the same as every other citizen.

Q. Do you know the amount of revenue that is derived from the operation of the stock yards?

A. No, sir.

1267 Q. In making your estimate of the values of these various tracts, Mr. Allen, have you considered the use to which the land is being put at this time?

A. Yes, sir; that it is put to and can be put to.

Q. Do you know what is the value of the use of those lands at the present time?

A. What lands do you refer to?

Q. The stock-yards lands.

A. I did not quite get your question.

Q. Do you know the present value of the use of this lands by the stock yards company?

A. What they are worth to the stock yards company?

Q. Yes, sir.

A. No, sir.

Q. You don't know what income the company derives from them?

A. No, sir.

Q. In making your estimate of values you were not influenced by the value of the use to which the lands were being put by the company?

A. No, sir.

Q. Not at all?

A. No, sir.

Q. I call your attention to a little piece of land comprising 1.421 acres cut by James street. As an expert in the appraisement of real-estate values, I will ask you, Mr. Allen, suppose an implement or manufacturing establishment were located on that piece of property and the cost of the building put up on that piece of property, covering all of it, were twenty thousand dollars, and that the net revenue of the implement or manufacturing institution were six thousand dollars a year, what, in your judgment, would be the value of that piece of property under those circumstances?

A. I could not answer that question. They might have made a judicious investment and they might not; their business might be worth just as much if they had put it on a sand bar in the Missouri river.

Q. Before you could answer a question of that kind would it be necessary for you to determine the value of the location of such a piece of property for the purposes for which it was being used?

A. It would be necessary for me to take into consideration the value of the surrounding property and the general character of the improvements in the neighborhood—its facilities one way or another—and the general market value of property in the entire district or in the immediate locality there. I wouldn't want to base my valuations on sales made under pressure, but upon the
1268 general holding prices of conservative business men. That would govern my valuation of that property.

Q. I call your attention to this fact, that this property which I have mentioned contains railroad tracks. Now, I understood you to say that property was most available for heavy manufacturing purposes when it was close to a railroad terminus?

A. Yes, sir; yes; it is more attractive if it has good railroad facilities, shipping facilities; especially for anything in the heavy line.

Q. Now, under the circumstances which I have recited, would the fact that this piece of property had been bringing in a net in-

come of six thousand dollars per annum have any influence upon your mind in determining the value of that property?

A. If I understand your question correctly, if that piece of property rented generally for six thousand dollars a year that would govern, of course, the valuation which I would place upon the land, but if it rented for six thousand dollars a year for some specific purpose and it could be rented for no other business but the one that was occupying it, that would not fix the permanent valuation of that ground.

Q. But assuming the state of facts I have suggested, and that the surrounding land was not any more or less available for the operation of the same kind of business, would the fact, then, that this concern was making a revenue of that character—rent, as we may say—would that influence your judgment as to the value of that land?

A. Yes; we arrive at values by the rental income; that is one of the elements that serves to make up the value of property.

Q. Now, in arriving at the value of property, you have stated one of the elements that would enter into the consideration of value. Now, I understand you to say that if you were called upon as an expert to examine that particular situation you would examine the surrounding property and see whether they had not been foolish in taking that piece of land rather than some other piece?

A. Oh, no; I didn't speak about their being foolish at all.

Q. Well, you would consider the justice or the propriety of the invest—

1269 A. That is it; I should take into consideration the character of the property in the immediate neighborhood; oftentimes it happens—it is a very common occurrence here in Kansas City—that a man puts a fifty-thousand-dollar building on a piece of property that would not justify a ten-thousand-dollar improvement; it was a common thing during the boom days.

Q. And what was the result of such experiments, as a rule, in your judgment?

A. The result is that the property is very poor income-producing property.

Q. Now, Mr. Allen, referring to the illustration which I have used, if, during a period of fifteen or twenty years, the manufacturing institution I have supposed had earned such an income as I have suggested, would that fact—would the length of time it had done that—be a controlling element in your mind in placing a valuation upon that piece of property?

A. The earnings of the plant that is upon the land does not govern the land value; as I said before, that plant might be located on a sand bar in the Missouri river, and still produce the same income, and still that sand bar would have practically no value as compared with the property in question. The earnings of an institution have nothing to do with governing the value of the lands, but if a private individual rents that property to a corporation and is getting a certain rental income from the property, which is in accord with the rental of property which governs that entire district,

then that enters very largely into the making up of the value of the property.

Q. Now, I will take you back for a moment to the corner of 11th and Walnut streets. If I gathered your judgment correctly from your statement that property of late years has increased in value by reason of its admirable location for the purposes for which it is being used?

A. Yes; that is right.

Q. It has been a revenue-producing district, and therefore people have been compelled to pay large prices for land and to put up extravagant or splendid structures, and have secured an adequate revenue by reason of the location; is not that so?

A. Yes, sir.

Q. So that the location of property with reference to its
1270 availability and adaptability to the uses to which it is being put, the revenue derived from, for an average length of time, and the scarcity of property of the same kind in that vicinity, are the controlling elements which make up the values of real estate, are they not?

A. Yes; the income from property under the circumstances that I stated.

Q. Now, Mr. Allen, are you acquainted with the various localities in which the railroads entering Kansas City have their terminals?

A. Well, I don't think I have them all clear in my mind.

Q. I mean in a general way, where they are?

A. In a general way, I know the railroad yards; yes, sir.

Q. Now, it is a fact which has been testified to here, and I presume it is undisputed, that fourteen railroads have their terminals in the immediate vicinity of the stock yards; do you know whether that is a fact or not?

A. I don't know the exact number; I know that a number of railroads have their terminals there in the bottoms; of course, some of them are several blocks away from the stock yards.

Q. Now, I believe you have stated it is a fact that in Kansas City, Missouri, and in Kansas City, Kansas, the wholesale men dealing in a heavy way have congregated largely in what is called the west bottoms; that is true?

A. Yes; that is true.

Q. Are the two facts concerning which you have testified reciprocal in their nature—that is, do the heavy wholesale men seek the railroad terminals and yards for their locations?

A. Why, that is one of the features that enter into their selection, is the railroad facilities.

Q. And, on the other hand, is not one of the reasons why the railroads have located their terminals there, in order to accommodate and be near their principal customers?

A. Yes, sir; I think it is, to a greater or less extent.

Q. Then their relations are somewhat reciprocal?

A. Yes, sir.

Q. Are you acquainted with the packing-house industry of your city in a general way?

A. I know of its existence; yes sir.

Q. Is it not a fact, Mr. Allen, that nearly all the packing-house industry of the two Kansas cities is located in the immediate vicinity of the stock yards?

A. Yes, sir; that is true; they are located in what we
1271 call the west bottoms and Armourdale. It is not, strictly speaking, immediate; it is in the west bottoms.

Q. From your knowledge of this city—you say you have been in business here for fifteen years—from your knowledge of the city and its business, do you consider, as a man accustomed to dealing in large transactions, that the present site of the Kansas City stock yards, considering all of its surroundings, is an available site for them?

A. Yes, sir; I think it is a very attractive location for them.

Q. In your consideration of that subject, Mr. Allen, does the vicinity of the railroad terminals and the packing-houses enter into that judgment.

A. Yes, sir; I have taken those things into consideration and have reviewed the situation very carefully.

Q. I mean now with reference to the availability of this tract of land for stock-yards purposes.

A. Yes, sir.

Q. Do you think, from the general knowledge of the business, that the present location of the Kansas City stock yards is a more available location for their purposes than Hyde park would be?

A. Why, certainly; that is a ridiculous question.

Q. It is a ridiculous question. Now, the same thing would apply, wouldn't it, to the Bullene store? There are other locations in the city that would be equally absurd for them to take, would there not?

A. Well, I won't quite agree with you on that point. That is an entirely different business. Railroad centers and railroad facilities don't enter into the consideration at all.

Q. There are other considerations, however, that apply?

A. If Emery, Bird, Thayer & Company were one block further south or two blocks further west they would undoubtedly get the same trade that they do at their present site.

Q. They couldn't very well locate a mile in any direction from where they are at the present time?

A. No, sir; at the same time when they were located further north on Main street, when they moved south they took their business along with them.

Q. Is it not a fact that the location of Emery, Bird, Thayer
1272 & Company's store has considerable to do with the amount of revenue they get from the property?

A. You mean adjoining properties?

Q. No, sir; their present location. Isn't that an element in their prosperity?

A. Yes, sir; it is.

Q. Now, assume that the Kansas City Stock Yards people have been prosperous, would you say, Mr. Allen, that their proximity to the packing-houses and their proximity to the railroad terminals was an element of their prosperity?

A. Oh, yes; that enters into it.

Q. Is that such an element of prosperity as would be destroyed by the removal of the yards two miles from their present location? I will not — destroyed, but impaired.

A. It would greatly impair it, I should judge.

Q. The fact is, to get the idea clearly, that the present location of the stock yards, everything considered, is one of the best that they could have?

A. Very attractive location, I would judge; of course, I am not familiar with their business.

Q. In a general way, that is true?

A. Yes, sir.

Q. Considering all the questions that you have been asked and the answers that you have made, what, in your opinion, is the value of this property that you valued to the stock yards company?

. I don't know.

Q. Mr. Allen, assuming that the value of the improvements on the 139 acres, concerning which you have been testifying, is $1,600,000, are you able to state what that property is worth for use by the stock yards company?

Objected to as incompetent, irrelevant, and immaterial. Objection sustained.

By Mr. HITE: I offer to prove by this witness, on his cross-examination, that assuming the improvements on this property to be worth $1,600,000, that he does not know the value to the stock yards company of these tracts A, B, C, D, and E, about which he has testified.

By the MASTER: I think it is hardly proper practice to save an exception to a ruling upon cross-examination, and then offer
1273 to prove something that you don't know whether you can prove by the witness or not.

Q. Please assume that the property designated by the letters A and B are used and occupied by the stock yards company as its main yard; then state, if you please, the reasons which have induced you to place a valuation of $20,000 an acre upon one piece and a valuation of $37,500 upon this piece.

A. My reasons are these: Taking the character of this ground represented by the letter A and also the character of the ground represented by the letter B I have taken into consideration the fact that much of this property in B is inferior to much of the property in letter *a*, and taking the tract as a whole I have placed a valuation of so much an acre on B and a valuation of so much an acre on A. The valuations which I place upon this tract A are governed by the prices held for ground in the immediate vicinity up and down the entire strip of it, on the north and on the south. A, as a whole, is superior property to B for their general business pur-

poses—that is, it is property which, if placed upon the market and one were called upon to put a real-estate value upon it, he must necessarily put a higher valuation upon it. B is further away from the business center, from the wholesale district, and much of the ground lies lower. It is built out close to the river front; has not the railway terminals and facilities that the property has lying along east of the letter A. Taking the whole thing into consideration, I put a different valuation upon it, of course.

Q. You speak of it as being inferior. Am I to understand by that there is any difference in the configuration of the land?

A. Yes; there is some little difference.

Q. Is one more level?

A. It is all practically level, if it comes to that.

Q. Then there is no difference in the topography of the land, is there?

A. Only from the fact that a large strip of B rests along the river bank—the Kaw river.

Q. Now, you spoke about this tract marked A being closer to the railroad terminals. Is it not a fact that B is really closer to the terminals?

A. I think not, generally speaking. Here is the main wholsale district; here are the Santa Fé and Rock Island yards, and
1274 here is the Union Pacific yards; of course, they have switches.

Q. The yards and terminals of the Missouri Pacific and Union Pacific Railway Companies are immediately north of B, are they not?

A. Yes, sir; immediately north.

Q. And are not the tracks of the Rock Island road immediately south of the tract B?

A. Yes; there are switches there, but you asked me about their terminals—their yards.

Q. You speak of the availability of it for general business purposes?

A. Yes, sir.

Q. What do you mean by that; do you include stock-yard purposes or exclude stock-yard purposes?

A. For general purposes. I mean a class of property that would be sought after by wholesale houses, manufacturing houses, stock yards, if you please, general all-around business, on account of its location for railway purposes, taking into consideration its proximity to the wholesale district on the north, enjoying the advantage of switching facilities—lying well. The tract A is nearer to business than B, nearer the railroad terminals. Taking these things into consideration, the tract marked A is better than the tract marked B; it is nearer the heavy traffic—the heavy business—and more convenient in getting into it and getting out.

Q. It is not any better for railroad purposes, is it?

A. Yes; it would be nearer the terminals there.

Q. Is the tract B any less valuable for stock-yard purposes than A?

A. From my limited knowledge of the business, I should judge no; it is all brought into usefulness.

Q. Suppose that the whole 82 acres in A and B were covered with packing-houses—every available inch of it was occupied by packing-houses, would there be any difference in the value of the two tracts; would any one foot be more valuable than its neighboring foot?

A. For that specific purpose I would not be able to judge that.

Q. In a case like that, would you, from its use by those packing-houses, make a discrimination of $17,500 an acre between those two pieces of land?

A. I think I would, Mr. Hite.

1275 Q. Of course, I am only asking for your judgment.

A. That is my honest conviction on the subject.

Q. Suppose you had this entire tract of land here occupied by the stock yards company for sale for stock-yards purposes, how would you try to ascertain the value of it for that purpose?

A. It would be such an unusual thing to hold land for a specific purpose, for a specific enterprise, when there are so many others, I don't see how a man has got any right to hold a tract of land for any such specific purpose, unless he knows that some railroad company or other corporation has actually got to have it. I don't see on what business basis a price could be put upon it for some particular purpose.

Q. You spoke of the availability of the east bottoms, what you termed the north bottoms, for manufacturing enterprises.

A. Yes, sir.

Q. Is that where Leeds and Randolph are located?

A. No; or rather what we call Manchester and Leeds are on the Blue, several miles out; but this other property that I referred to is right in close proximity to the city, where the Zenith mills, Heim's brewery, etc., are located.

Q. Are there any railroad terminals there?

A. Railroad facilities; yes, sir.

Q. Terminals?

A. I don't understand what you mean particularly by terminals. The Missouri Pacific and Chicago & Alton have switch facilities in that tract, and the Terminal road runs its track across there.

Q. By comparison, Mr. Allen, which bottoms, the east bottoms or the west bottoms, has the best facilities?

A. The west bottoms, decidedly.

Q. If wholesale men should, in seeking a location, *should* locate in the east bottoms, would they have to pay any switching charges to get into the west bottoms to have their freight gotten out?

A. I don't know what their schedule of charges are on the Terminal.

Q. Do you know whether there is any charge at all?

A. There is a slight charge, I think.

Q. So that, as a matter of fact, Mr. Allen, if a business man should apply to you with an inquiry as to the most available place for him to locate, where he could have the best and cheapest railroad

1276 facilities, you would send him to the west bottoms?

A. If he had a sufficient amount of capital to purchase a

plant there, and his business was of such a character that it demanded the best railroad facilities, certainly I should, for he would find better advantages in the west bottoms than anywhere else at the present time.

Q. You spoke of having some property for sale in the west bottoms, in the vicinity of the stock yards?

A. Yes, sir.

Q. Where is that property located?

A. Well, I have got property all around it. I have property right here on Wyoming street between 16th and 17th streets, a corner that I can sell for $125 a foot. I have a corner—I think it is 16th and Liberty, right adjoining the Santa Fe tracks—that I can sell for $150 a foot. I have two lots right south of there that I can sell for $125 a foot. I have three pieces of property on Liberty street between 14th and 16th street that I can deliver for $100 a foot; another for $125, and another, with a brick house on it, for $150. There is quite a good deal of property for sale in Skiles & Western's addition, ranging all the way from one hundred to two hundred dollars a foot.

Q. And upon that basis you have figured $37,500 per acre for this property of the stock yards company?

A. Yes, sir; that has entered into the thing; it is one of the reasons I gave before that served to make up the value.

Q. There is some property within a short distance of that that you have for sale that is held at one thousand dollars a foot?

A. I don't know of any such property.

Q. Do you know of any at five hundred dollars a foot?

A. I would presume that one of these corners—take it, for instance, east of 16th street, so long as the exchange building stands where it does at the present time, these corners are quite valuable on account of their location, but if you take them back, like the tracts I have mentioned here, they have nothing like the value.

Q. You are in the loan business, are you not?

A. Yes, sir; I have loaned some money.

1277 Q. Have you loaned any money in that vicinity in which you now have property for sale?

A. No, sir; I have not made any loans. That is what we call intermediate property; it is neither business nor residence property at the present time—that is, you couldn't rent it to acceptable residents because of the character of the buildings and surroundings. People of that character would not live in that locality. It is neither business, because business has not grown out to it sufficiently to bring it into use, so it is a sort of intermediate property. It is not property that is attractive to loan money on, because it is not heavy income-producing property. We sort of avoid that class of property in making loans for that reason.

Q. Suppose you were called upon to buy a tract of ten acres for packing-house purposes within three blocks of the stock yards; do you think you could buy it?

A. I think so; yes, sir. Now, I have for sale here a block of property—block 20, Armourdale—it is owned by Messrs. Bond &

Dexter; a thousand front feet, and it has switches on both sides of it and a rapid transit line on the south front of it. Schwarzschild & Sulsberger are still two blocks further south, and the stove manufactory is west of it. It is two blocks west of Reid's packing-house that is now partly in ruins, and is in every way available and attractive for a large manufacturing plant. Then right south of that, in the block south of that, there is a tract also for sale. The valuation that is placed upon that property is the same as that placed upon block 20—$40 per front foot—on a basis of about ten thousand dollars an acre.

Q. How far is that from C?

A. That is equally attractive property.

Q. How far is it from C?

A. It is about three blocks from C, south and a little west.

Q. Is that available for packing-houses?

A. It is certainly if any property is down there. I make that statement not because I have any knowledge of the packing-house business, but because packing-houses are all around it.

Q. Now, Mr. Allen, is property as you approach the river more available for packing-house purposes?

A. I am not sufficiently versed in the packing-house busi-
1278 ness to state whether it is especially attractive to have a packing-house on the banks of the river or not.

Q. Have you any other land in mind that you could buy within a short distance of the stock yards?

A. Yes, sir; there is a very large tract of land for sale—what we call the Splitlog tract—lying a little north of this 7.125 acres over in these bottoms, right south of the bridge, which runs to the west bank of the Kansas river, near the tract known as D.

Q. How far north of that tract, Mr. Allen?

A. It is only a little ways from it. It is almost immediately west of the property marked *e*.

Q. Do you know what that property is worth?

A. That was subdivided during the days of real-estate activity here, and was held all the way from a hundred to a hundred and fifty dollars a foot at that time. They spent quite a little money on the addition, in grading the streets, and in one or two instances put in sewers. I sold five hundred feet last January a year ago, I believe it was, on the basis of forty dollars a foot.

Q. That would be ten thousand dollars an acre, would it not?

A. Yes.

Q. What difference is between that land and the tract marked D?

A. That land is all high land.

Q. Splitlog is?

A. Yes. I do not mean to say it is land that is strictly above the high-water mark—yes; it is, too, as it is graded—but it is good level land. Part of this tract marked D is low; made up merely from the accretions which have floated in there from the river. There is a part of it that is very much like a pond, covering two acres of it, anyway, and most of it muck and accretions, which, as I have said, has settled back in there from the river. There is no frontage, no

protection whatever against the river. The river is liable to cover it with water at any time.

Q. Then the land that you have mentioned is for that reason worth sixty-five hundred dollars per acre more than D?

A. Yes; fully that.

Q. Do you know of any tracts of land east of the stock yards consisting of three or four acres that could be purchased?

A. I have not in mind just now any directly east of the stock yards. You know there is only two blocks there until you
1279 strike Liberty street, and on the east side of Liberty street we strike the railroad tracks of the Santa Fe Company. They come in there from the south and run clear up to the Union depot.

Q. If you had a commission at this time to buy ten acres of land lying within four blocks east of the stock yards, could you fill such an order as that?

A. Directly east? No, sir.

Q. If you had such a commission to buy that much land in any direction, except north and west, could you fill such an order?

A. Well, I should think there would be no question about being able to secure a tract of several acres a little further south. Still I have no positive knowledge in that direction. I am speaking now of property in the immediate neighborhood of the yards.

Q. Am I justified in concluding from your testimony that land down there is very scarce?

A. Acre tracts?

Q. Yes.

—. Acre tracts are scarce, certainly they are. It has all been platted and subdivided.

Q. In your experience in the business in this city, has there been any steady demand for property in these bottoms? I do not mean occasional fluctuations, but in general.

A. We have had a great many calls here in the city for acre tracts, running from one to five and to ten acres for manufacturing purposes; but as a rule the attention of these people has not been attracted to this locality. They have either been attracted toward Armourdale or south of the city or north of the city. Manufacturing institutions as a rule which come to a city like this looking for a location like to have cheap land. They cannot afford to pay any such prices as are put upon this land down here in the west bottoms for ordinary manufacturing purposes.

Q. I will ask you to assume that for fifteen years the property designated by the letters A, B, C, D, and E has been used by the stock yards company, and as a result of such use there has been an average earning capacity of that land of six per cent., based upon a valuation of forty-five thousand dollars an acre. Assuming those to be the facts, will you state to the special master what, in your judgment, the property comprised in the tracts A, B, C, D,
1280 and E is worth at the present time, just as it stands today, for any stock yards company.

Mr. Boyle objects to the question as incompetent, irrelevant, and immaterial and not proper cross-examination. Objection overruled.

A. I would not be able to make valuations on that ground, because of some special business carried on upon it. I think the valuations which I have placed upon this property are liberal. I have certainly given every bit of doubt in favor of the stock yards company.

Q. Are you able to state from your knowledge of the real-estate business what is the value of the property designated by the letters A, B, C, D, and E for stock-yards purposes?

A. No; I can't tell you anything of that kind. I know nothing about the business of the stock yards company.

Q. Then, when you testify as to the value, in your judgment, of the tracts A, B, C, D, and E, you give your answer without reference to the value of the land for stock-yards purposes?

A. Yes, sir; I give it on the basis of general values.

Q. Will you be kind enough to state generally what, in your judgment, is the approximate value of the land upon which the Keith & Perry building stands?

A. Well, that is a very attractive corner; that is a corner that has got a prospective future to it. I should think that two thousand dollars a foot would be within reason for it.

Q. That would be at the rate of five hundred thousand dollars an acre, would it not?

A. I haven't figured it up.

Q. It is fifty thousand dollars a lot?

A. Yes; it is a very valuable corner.

Q. What is the accepted method of computing the number of lots in an acre?

A. Generally speaking, we say there are ten 25-foot lots to an acre.

Q. Ten to the acre?

A. You take an acre tract of ground; it depends altogether on how that acre is situated; for instance, it might be situated that in order to divide it into lots you would have to give a whole street, and it would not make ten lots. Now, generally speaking, ten 25-foot lots 120 feet deep, with a 12-foot alley in the rear and a 60-foot street in front—that is, laying these lots out of a 20-acre tract—will contain an acre, or an acre will make ten such lots.

1281 Q. Referring to the Keith & Perry building, please state what, in your judgment, that property would be worth if the rents obtained from that building were cut down forty per cent. by hard times or any other cause.

A. I could not answer that question.

Q. Would it have any effect upon the value of the property?

A. I would say yes, if that reduction is a permanent factor in connection with the property, but if it is *was* not a permanent factor it would not materially change the value of the property.

And in answer to redirect interrogatories propounded to him by Mr. Boyle, attorney general, the witness testified as follows, to wit:

Q. Mr. Allen, in reference to this D tract which you estimated at thirty-five hundred dollars an acre?

A. Three thousand I put that at.

Q. Then what price would you put per acre on the Splitlog tract?

A. Oh, I would place a valuation on that according to what it has been selling for in the last year, of seven to eight thousand dollars an acre, take it as a whole.

Q. Now, does the character of the land, the fact that one is high and dry and the other low and wet, enter into the value of the two pieces?

A. Yes; that enters into the distinction I have made.

Q. As to the prices?

A. No; only simply the location of it.

Q. The fact that one man would make a property successful and another man failed in business on that property, would that necessarily determine the value of the property, Mr. Allen?

Objection as not proper redirect examination. Objection sustained.

Q. I don't know whether it appears in evidence whether the river front of this tract D is riprapped or not. Is it, Mr. Allen?

A. No, sir; it is not.

And in answer to recross-interrogatories propounded to him by Mr. Hite the witness testified as follows, to wit:

Q. Does the price paid for property have any influence, in your mind, in determining its value?

1282–1285 A. Yes; on the general market.

Q. Now, suppose the stock yards company paid a thousand dollars an acre for that land marked A, does that fact influence your judgment as to the value of it?

A. That depends largely upon the conditions under which they bought it.

Q. Please look at the little tracts marked *e*.

A. Yes, sir; I examined those very carefully.

Q. It is in evidence, Mr. Allen, that the stock yards company paid at the rate of about thirty-five thousand dollars an acre for that property. Does that have any influence upon your mind in determining the value of that property?

A. Not on the general value of it.

Q. Then the payment of one thousand dollars an acre for the land in A and B does not have any influence upon your judgment as to the value of the land, does it?

A. No, sir; not what it is worth for general purposes.

Q. Does the return of the tax assessors, with reference to the value of property fixed and returned by them, have any influence in determining the value of property?

A. It is a very poor rule to go by; they vary so largely.

Further direct interrogatories by Mr. BOYLE:

Q. You have had some experience in selling property to the stock yards company, haven't you?

A. I sold one tract of land at the corner of 16th and Genesee streets; I suppose it went to the stock yards company; I sold it about the time they were buying lands.

Q. It is now occupied by the stock yards company?

A. Yes, sir.

Q. How much was the price of that tract?

A. That was 100 feet of very nice ground on the corner of 16th and Genesee streets; I think it was one of the first sales that was made.

Witness excused.

1286 R. E. CABLE, a witness sworn on behalf of the defendant L. C. Boyle, as attorney general of the State of Kansas, in answer to direct interrogatories propounded to him by Mr. Boyle, testified as follows, to wit:

Q. What is your age?

A. 62.

Q. Residence?

A. Kansas City, Kansas.

Q. How long have you resided in Kansas City, Kansas?

A. Over 30 years.

Q. What has been your business?

A. Well, I have been in a variety of business. I have been somewhat in the real-estate business, but not very extensively.

Q. What official position, if any, have you occupied in Wyandotte county?

A. I have held several different positions; probate judge, 8 years, and I have been assessor two different times, or rather deputy assessor, in 1892 and 1894.

Q. How long have you been identified with the real-estate interests of Kansas City, Kansas?

A. Well, I have been familiar with the values of real estate in Kansas City, Kansas, for the last 20 years, probably, in a general way.

Q. Have you bought and sold property?

A. Some; not very extensively, but I have always kept posted on values as well as I could.

Q. Are you familiar with the real estate lying contiguous to the stock yards in Kansas City?

A. Yes, sir: I am familiar with it.

Q. Have you had any opportunity of studying the situation over there?

A. Well, I have valued every lot, lot by lot, between the Kaw river and the State line at two different periods.

Q. Then I would imagine you had been on several boards of condemnation.

A. I have been on several. I have been on one in those bottoms, and I was appraiser on the Santa Fe road through that county.

Q. About how many years did you say you had been in the real-estate business; dealing in real estate, as occasion might arise?

Q. Ten or twelve years.

Q. Do you know what is the value of this tract of land which is marked C on this map, which comprises the quarantine
1287 yards of the Kansas City Stock Yards Company? I mean now the value of the land, without the improvements, for general purposes, railroad purposes, stock-yards purposes, wholesale purposes, or for any other purposes for which it might be available. Do you know what the value of that land is?

A. I do.

Q. Will you state to the special master what it is worth per acre?

Preliminary cross-examination by Mr. HITE:

Q. Have you sold any real estate in the vicinity of that tract?

A. No, sir.

Q. Have you bought any?

A. No, sir.

Q. Did any person who did ever tell you the price he had received for it?

A. Yes, sir.

Q. More than one?

A. You mean right in that place?

By Mr. BOYLE: He means right in that vicinity.

By Mr. HITE: Just a moment.

By Mr. BOYLE: You don't mean right in the quarantine yards?

By Mr. HITE: When I say in that vicinity I mean within a block or two blocks in either direction; do you know of any sales that have taken place there, your information being received from the buyer or seller of such land?

A. No, sir.

Q. Have you ever had any transactions that necessitated the ascertainment of the actual value of any land within the immediate vicinity of that tract marked C?

A. Yes; I have assessed it twice.

Q. That is the only way you have of knowing its value by having assessed it twice?

A. Well, no; I know the general value of property in that vicinity.

Q. How do you know that, Mr. Cable?

A. Simply because I have kept posted. I have known of and seen the conveyances that have been published in the newspaper every week for the last ten or fifteen years, and have an understanding of the value of the property.

Q. But you have never had any transactions of buying or selling any property around there?

A. No, sir.

By Mr. HITE: I don't think he is competent, and object to the question.

1288 Objection overruled.

Direct interrogatories resumed by Mr. BOYLE:

Q. Do you know of the condemnation proceedings that have taken place in reference to property close to the quarantine yards?

A. Some of them.

Q. Since 1888?

A. Yes, sir.

Q. Now, what, in your judgment, is the value of these quarantine yards per acre—the naked land?

A. I should say that that tract C is worth ten thousand dollars per acre. The property along there was condemned at about that price.

Q. Do you know the value of the land that is designated by the letter D on the map, lying just north of the quarantine yards and unoccupied?

A. I think so.

Q. What, in your opinion, is it worth per acre?

A. I should say that is worth five thousand dollars an acre.

Q. I now call your attention to the tract marked E on the map, being the north yards of the company. Are you familiar with the values of lands in that vicinity?

A. I am.

Q. What opportunities have you had of observing this land?

A. I have known it very intimately since it was a sand bar and laid out into lots. I have assessed it and have condemned property near it at least once.

Q. Do you know the value of the property comprised in the designation E?

A. Yes, sir.

Q. You may state what it is worth per acre.

A. I should say that is worth $12,000 per acre.

Q. What is this tract down here next to the river worth?

A. I should say that is worth about four thousand dollars an acre.

Q. Are you familiar with the value of the tract marked B?

A. Yes, sir.

Q. What is that worth per acre?

A. I should say that is worth twenty thousand dollars per acre.

1289 And in answer to cross-interrogatories propounded to him by D. R. Hite, counsel for the complainants, the witness testified as follows, to wit:

Q. You say you are tax assessor, Judge Cable?

A. Yes, sir.

Q. And also were on the board of condemnation for some railroad whose name you don't remember?

A. No, sir; it was not for their track; it was just some lots on Wood street I was condemning.

Q. You don't remember the name of the road?

A. I do not.

Q. Who else was on the board with you?

A. I am not certain, but I think Mr. Bridgens was one.
Q. Who else?
A. I can't remember the other party.
Q. Was not a man by the name of Sharp on the board with you?
A. I think not.
Q. How many were there?
A. Three.
Q. Did you have any disagreement among yourselves as to values?
A. Not much.
Q. You finally agreed before you made your report, did you?
A. Certainly.
Q. The report was made under oath, was it not?
A. Yes, sir.
Q. Was the report that you made your best judgment as to values at that time?
A. It was the best judgment of the three of us; we agreed upon it.
Q. And the report represented your best judgment as well as the best judgment of the other two, did it?
A. I presume it did.
Q. You know it did, don't you?
A. Yes; we had to give and take a little where there is persons condemning property who have different notions.
Q. How much property did you condemn?
A. I think it was only eight or ten or twelve lots; somewhere along there.
Q. Had there been any other condemnation proceedings with reference to the same railroad before you commenced to act?
A. For their track?
Q. Yes.
A. The track was right along Wood street when we appraised it.
1290 Q. There was only one track, wasn't there?
A. Yes, sir.
Q. When you were condemning land along through here (calling the attention of the witness to a map and to the piece of land lying east of the tract marked E), was that freight-house there?
A. I don't remember. I don't think we came down as far as Pacific avenue. I think it was along in here, somewhere further up, where we were condemning.
Q. Was the tract which you were condemning right close up against the stock-yards property?
A. It was right down the middle of Wood street.
Q. You didn't condemn any lots at all then, did you?
A. Yes; it was lots we were condemning for some parties for some purpose other than the track.
Q. Right of way?
A. I think it was for some yardage that they wanted or something of that character. It was not the track at all.

Q. Did you condemn any property belonging to the stock yards company?

A. No, sir.

Q. Mr. Cable, there wasn't another railroad with established tracks in there at that time, was there?

A. I think not; only than one.

Q. Just the one coming in there?

A. Yes, sir.

Q. To refresh your recollection, I will ask you if that was not the Kansas City & Northwestern.

A. I don't know. That road was built at that time. It was already laid down. We were there condemning some property outside of the road for some other purpose.

Q. But wasn't it for that railroad?

A. That may be.

Q. Do you think that was in 1888?

A. Somewhere along there. It was after the road was laid.

Q. Do you know anything about operating stock yards?

A. No, sir.

Q. Do you know what it cost to operate them?

A. No, sir.

Q. Do you know how much revenue they get?

A. No, sir.

Q. Are you well acquainted with the bottoms down there, Mr. Cable?

A. Why, pretty well; yes, sir.

Q. Is there much land east of the stock yards that is for sale?

A. You mean in Missouri?

Q. Yes.

A. I don't understand. Understand me, when I say I am familiar with the bottoms, I mean in Kansas.

1291 Q. You don't know anything about the land east of the State line?

A. No, sir.

Q. Is there much land for sale east of the Kansas river and south of Central avenue?

A. Why, yes; I think there is a good deal for sale; I think it is nearly all for sale.

Q. Have you inquired of anybody about the prices that people are holding their property at down there?

A. Not recently, but I inquired in 1894, when we assessed the property, and made a pretty thorough investigation of what people were asking for property along there, and what it was selling for and what they had for it.

Q. Did the people generally know you were the deputy tax assessor?

A. Some of them might, and some of them might not.

Q. Did you ever talk with Charley Wilson about the value of lands down there?

A. I may have talked with him; I presume I have.

Q. Is Mr. Wilson a pretty conservative sort of real-estate man

A. Well, in some ways he is, but he is a man who puts the prices of real estate pretty high in that bottom. I always thought they were pretty high.

Q. Did he tell you what he thought real estate was worth down there at the time you are speaking of?

A. Yes, sir.

Q. What did he think it was worth?

A. He thought it was worth a little more than we did.

Q. How much more?

A. Well, probably one-third more.

Q. What did he say he thought it was worth?

A. I don't remember what his figures were. I did at that time, but he had assessed the property in that year, 1892, I think.

Q. Was he tax assessor?

A. He is deputy tax assessor.

Q. You said you owned a lot down there?

A. Yes, sir.

Q. When did you sell it?

A. I think about 1887.

Q. Whom did you sell it to?

A. I sold it to a man named Old, I think.

Q. How many feet front?

A. 25 feet.

Q. What did you get for it?

A. I got eight hundred dollars.

Q. Whereabouts, with reference to the tract marked E, was that?

A. It is 247 Wood street.

Q. Near the packing-house?

1292 A. Yes; between Central avenue and Fowler's packing-house.

Q. You sold that in 1887?

A. Yes, sir.

Q. Any improvements on it?

A. Yes, sir.

Q. What was it?

A. Two-roomed house.

Q. What rent did you get for it?

A. Eight dollars.

Q. In estimating the value of this real estate do you take into consideration the revenue that is obtained from it?

A. E?

Q. Yes.

A. I judge it partly from *from* the revenues brought in by this adjoining property; I make that one element in my valuation, but I do not take into consideration the revenue derived from that business because I know nothing about it.

Q. What, in your opinion, is that tract E worth just as it stands today?

A. For general purposes or the purposes for which it is being used?

Q. For the purposes for which it is being used.

A. Certainly I could not answer that question.
Q. You do not know?
A. No, sir.
Q. I call your attention to the tract B. What is that worth as stands there today for the purposes for which it is being used?
A. To the stock yards company?
Q. Yes.
By Mr. BOYLE: With all of the improvements on it?
By Mr. HITE: Yes, sir; just as it stands today.
A. I certainly don't know.
Q. You have spoken about the tract marked C; please st what, in your judgment, that property is actually worth today, j as it stands there, for stock-yards purposes.
A. I could not answer that.
Q. You don't know?
A. No, sir.
Q. What, in your judgment, is that tract D worth just as it stan today?
A. I don't think that is worth more than about five thousa dollars as it stands; it is my recollection that there are only a f pens on there and a track along there.
1293 Q. It is worth that, is it not?
A. I presume it is worth that.
Q. Do you know anything about a piece of land up north of th what is known as the Splitlog tract?
A. Yes, sir.
Q. What is that worth per acre?
A. Well, it is worth a great deal more than that, because it graded.
Q. How much more?
A. It is worth twice as much.
Q. That is worth ten thousand dollars an acre?
A. Yes, sir.
Q. Is it all graded?
A. I think most of it is graded; the biggest part of it is grad the streets are filled up.
Q. Have you been over the Splitlog property at all?
A. I see it nearly every day.
Q. Is it not a fact that only part of that property has be graded—the streets?
A. That is what I mean; the streets are graded.
Q. Otherwise it is not graded, is it?
A. No, sir.
Q. Now, standing on one street and looking towards the n street, the lots are just hollows between the streets, are they no not filled up to grade at all?
A. None of them are level.
Q. You say that property is worth ten thousand dollars an ac
A. I think so.
Q. That is your judgment?
A. For general purposes, manufacturing, etc.

Q. When you make up your judgment with reference to the value of real estate do you take into consideration the revenue derived from it?

A. Yes, sir; certainly.

Q. Do you know what this property between the north yards and B is worth?

A. With the railroad tracks on it?

Q. Just as it stands today.

A. It might be worth a hundred thousand dollars an acre to those people; I don't know what it is worth for the uses to which it is being put.

Q. You don't know?

A. Certainly not.

Q. What is the land in the bottoms mostly used for?

A. Outside of stock-yards purposes, do you mean?

Q. Yes; outside of the stock yards, what is it mostly used for?

1294 *Q.* For residences, for wholesale business, and packing-houses.

Q. Do you know what this land would be worth, concerning which you have been testifying, for any specific purpose?

A. For any specific purpose?

Q. Can you name a purpose for which you think it is worth the price you have named?

A. This property here?

Q. Yes; E. You say that property marked E is worth twelve thousand dollars an acre.

A. Yes, sir; I think so.

Q. What kind of an enterprise is it worth twelve thousand dollars an acre for?

A. I suppose it would be worth that for a manufacturing plant or for an implement house.

Q. They couldn't use it all, could they?

A. Several implement manufactories could.

Q. For what other purposes besides implement factories could it be used for?

A. For almost any purpose—for manufacturing, packing-houses, and it could be used for what it is now being used for—stock yards.

Q. It would be used for that?

A. Yes, sir.

Q. Do you think it is well located for that purpose?

A. Certainly.

Q. Do you know of any other location as good as that for stock-yards purposes, considering the packing-houses and railroads around it?

A. There is plenty of land up above Armourdale that lies as well for stock-yards purposes if it had the terminal facilities.

Q. If it had the terminal facilities?

A. Yes, sir.

Q. If it had terminal facilities, would — be as available as this?

A. That I couldn't say; but in my best judgment it is v
adapted for stock-yards purposes; it appears to be.

Q. Do you think the stock yards could be moved two miles av
from their present location without greatly impairing their va
and usefulness?

A. I don't know as to their usefulness, whether it would be
paired or not; I think it certainly would impair the value of
plant.

Q. From your general knowledge of the surroundings in the
cinity of the stock yards, what can you say with reference to t
being the best location for them under all the circumstances t
they could have?

1295 A. I am not familiar enough with their business to kn
what would be the best location for it, but from all appe
ances they have got the best location now that they could find.

Q. You spoke about wholesale men and manufacturers locat
on the tract E. Why shouldn't they go over to the Splitlog tra
is not that just as good for their purposes?

A. It might be; yes, sir.

Q. But is it?

A. I don't know that it is.

Q. Is it not a fact, Judge Cable, that the proximity to them of
railroads would be valuable to such enterprises?

A. I presume it would.

Q. Now, suppose you put an enterprise there that cannot
along without a railroad, wouldn't that be a valuable tract for su
enterprises as that?

A. It would; yes, sir.

Q. Do you think it would be worth twelve thousand dollars
acre to them?

A. That would depend on what they were using it for, I presu
whether they could pay that or not.

Q. It would largely depend on what they were using it for?

A. Certainly.

Q. And it might be such a thing that they could afford to p
more than that?

A. Yes, sir.

Q. In estimating the value of property you said that you to
into consideration the revenue derived from it, did you not?

A. Yes, sir.

Q. Have you taken into consideration the revenue derived fr
E?

A. No; I have valued E from the value of this surroundi
property.

Q. Then, you don't use your usual method in ascertaining t
value of E, do you?

A. Only by comparison with the property surrounding it.

Q. But you leave out the element of revenue entirely, don't yo

A. As far as E is concerned?

Q. Yes.

A. I haven't the least idea of what the revenue from E is.

Q. If you knew that the revenue from E was such that it would pay six per cent. on forty thousand dollars an acre, then what would you say was the value of E?

A. I would say that would be using it for some specific purpose, to get that much revenue, and then it is worth forty thousand dollars.

Q. Suppose that the stock yards company could make the
1296 same amount of money from its entire property, would it be worth that much to the stock yards company?

A. It would be worth that much to the stock yards company if they could make that much out of it.

Q. Suppose that that revenue was cut down so that the company could only make 3 per cent., what would you say the property would then be worth to the company?

A. Just half what it would be before.

Q. So that cutting the revenue in two cuts the value of the land in two, does it not? I am asking for your best judgment.

A. It would in that case.

Q. Suppose there was a packing-house on there and they couldn't get any cattle to slaughter for one year, and did not make any revenue at all, and then for a few years they got plenty of cattle, would the value of the land fluctuate? Would it be just the same, whether they got any revenue or not?

A. You would take the average revenue for a term of years to ascertain the value of the property.

Q. Suppose these stock yards were moved away from here entirely; suppose they should pack up their plant and go to Omaha, and just leave that land all naked, what effect would such action as that have upon the surrounding business, on the value of the surrounding property?

By Mr. BOYLE: You mean on the value of the real estate surrounding it?

By Mr. HITE: Yes.

A. I suppose if the area is so limited there would be other industries come in and take it.

Q. Would it have any effect upon the value of the surrounding property?

A. I presume it would; yes, sir; somewhat.

Q. Referring to these condemnation proceedings, Judge Cable, you have a distinct recollection of them, have you?

A. I remember of being on a board of commissioners to condemn some property for a railroad company there.

Q. Did you have more than one board of condemnation commissioners?

A. Not there.

Q. Was that for the Northwestern railroad? That went through there when you were on the board at that time, did it not?

A. Yes, sir.

Q. You gave the property-owners the benefit of your best judgment when you condemned through there, did you not?

A. Yes, sir; certainly.

1297 Q. And the railroad company, too?

A. Yes, sir.

Q. Now, have you any knowledge of any change in the value of real estate since that time right along in there where you were condemning?

A. Yes, sir; all that property has depreciated since then.

Q. You think it has depreciated?

A. Yes, sir.

Q. Upon what do you base that statement?

A. Because the rents have gone down; the income from all the property in that vicinity has been lowered. There is not the demand for it that there was about that time.

Q. How about sales—haven't there been a good many sales in that vicinity?

A. No; not many.

Q. Do you know of any sales of property north of Wood street and west of First street? You have referred to those sales made lately to the stock yards company.

A. Yes; I know about those.

Q. Do you know what they paid?

A. Yes; they paid all the way from forty to fifty to sixty thousand dollars an acre.

Q. You don't think it is worth that?

A. No, sir.

Q. Not even for their purposes?

A. No; I don't say that for their purposes. It might have been worth a hundred thousand dollars. That ain't a fair criterion of value at all.

Q. You don't know of any other purpose that it would have been worth forty thousand dollars an acre for?

A. I suppose—if you will make me answer the question—I suppose if the Louisiana lottery could come in here and be allowed to run their lottery down there they could pay fifty thousand dollars for it.

Q. Could the Louisiana lottery have bought 140 acres of land in those bottoms in the last ten years?

A. Could they have bought it? I presume if the Kansas legislature had given them the privilege to run their lottery there I presume they could.

Q. What prices do you suppose they would have to pay?

A. I suppose they would have to pay fabulous prices if people knew what was coming.

Q. If they didn't know that, then what?

A. I don't know.

Q. Do you know whether the people who sold this property knew that the stock yards company was buying it?

1298 A. I don't know, sir. I should judge, though, that they did.

Q. That is merely a surmise, is it not?

A. Yes, sir.

Q. Suppose it transpires as a fact that they did not know who was buying that property, would the selling price of that property influence your mind in making up a judgment as to its value?

A. Not much; no, because these people have been holding this property on speculative values, expecting that the stock yards company would require that land, or some railroad company, and they are holding it for speculative purposes.

Q. Thinking that the stock yards company or some railroad company would take it in?

A. Yes, sir.

Q. Is that because the land is peculiarly adapted for those two purposes?

A. I presume so; the lots are certainly not worth the prices for general purposes.

Q. What do you mean by general purposes?

A. For drug stores, groceries, saloons, or any other business or for residences; any business you choose to consider.

Q. Wouldn't it be worth the prices we have been considering for packing-house purposes?

A. I couldn't answer.

Q. Wouldn't it be worth that for railroad purposes?

A. That I don't know.

Q. When you say for general purposes you do not mean for large enterprises; you mean small ones?

A. I mean them altogether.

Q. You say you don't know anything about it for railroad purposes or for packing-house purposes; all you know about it is for saloon purposes and retail stores?

A. Yes, and residences and manufactories; small manufactories.

Q. But I am talking about large manufactories; is it worth that for large manufactories?

A. I shouldn't think so; I think it would be very high prices for any manufactory.

Q. At thirty thousand dollars an acre?

A. Yes, sir.

Q. That is $125 per front foot. You think that would be an extravagant price for a manufactory to pay for that land, do you?

A. I do.

Q. You don't know anything about manufacturing, do you?

A. Not a great deal.

1299 Q. I mean in a very large way?

A. No, sir.

Q. Do you know anything about sholesale dealings in a very large way?

A. No, sir.

Q. Do you know anything about the prices that wholesale men have paid for land down in those bottoms to put their warehouses on?

A. Not of my own knowledge, I don't.

Q. Judge Cable, suppose it is a fact that wholesale dealers have paid as high as five hundred dollars a front foot within a thousand

yards of the land we are now talking about, would that influence you any in determining the value of this land in E?

A. It would have some effect; yes, sir.

Q. Then you have made up your judgment in reference to the value of E, upon the theory that the land surrounding E could not be used for small manufacturing purposes, dwellings, saloons, and little retail stores at any such prices as that; isn't that a fact?

A. To some extent, because there is a great deal more demand for that class of property than there is for these great packing plants.

Q. Is that true within your experience?

A. Yes, sir.

Q. Has there been more property bought for the purposes you have mentioned than there has been for stock yards and railroad purposes.

A. I am speaking of this land which it not used for those specific purposes.

Q. You mean at the present time?

A. Yes, sir.

Q. If that land was thrown upon the market now it would not bring that value, because these little enterprises which you have mentioned would not be able to pay it; is that what you mean?

A. Or the big ones, either.

Q. You don't know anything about what the big ones would be able to pay, do you?

A. No; but that is my judgment.

Q. But your judgment is not based upon any facts in your mind as to what these big corporations could afford to pay?

A. No, sir.

Q. Now, when you were on this board condemning through there, did you allow anything for the prospective value of the land or was it the actual value of the land at that time?

A. The actual value at that time.

1300 Q. Did you then have in mind the value of this land for manufacturing purposes and stock-yards purposes and railroad purposes?

A. We were condemning it for railroad purposes.

Q. And you put a valuation on it for that purpose, did you?

A. Yes, sir.

Q. That would not have been the value you would have put on it for any other purpose, would it?

A. Well, we tried to get at the actual value of the property at that time; we knew at the time we were condemning it for a railroad.

Q. And you put a value on it for that purpose; is that true?

A. We gave the property-owners the benefit of any doubt we had in our minds about the value of it.

Q. Do you know what the value of the stock-yards property is today as it stands?

A. The land, you mean?

Q. The real estate belonging to the stock yards company, just as it stands today.

A. No, sir; I have got my judgment on the value of the lands of the company. You mean the improvements, also?

Q. Just as I stated; just as you look at it today; do you know what is the value?

A. I don't; and no person living except the stock-yards people can answer that question.

Q. Would they know?

A. Yes; what it was worth to them.

Q. Wouldn't they know better than anybody else what it was worth?

Objection as improper cross-examination. Objection sustained.

Q. Then, as I understand you, the value which you have put upon this property is the value it would possess if it were a farm located down there in the bottoms?

A. Certainly.

And in answer to redirect interrogatories propounded to him by Mr. Boyle, attorney general, the witness testified as follows, to wit:

Q. Surrounded as it is now?

A. With all the things occupying the land adjoining it now, of course.

1301 Q. You say you think the stock-yards officers would be the only people who would know what the land was worth?

A. Yes; to them.

Q. That would be by reason of the profits that they were making out of the business?

Objection as improper redirect examination. Objection sustained.

Q. What do you mean by that, Mr. Ca[illegible].

A. I mean to say that the stock-yards peop[illegible] are the only ones who would know what that property is worth to them.

Q. In what way?

A. By the income which they derive from the property by reason of the specific business they conduct on that land.

Q. By reason of the rates that they charge?

Objection as improper redirect examination. Objection sustained.

Q. Have you valued this land independent of any condemnation proceeding or anything of that character or anything that you did prior to the time you made these valuations?

A. Yes, sir; and I have fixed the value of every lot along in the bottom there.

By Mr. DANA: That is, when you condemned it?

A. No; when we assessed it.

Q. You have assessed it since you condemned it?

A. Yes, sir.

Q. And from your knowledge you fix these values?
A. Yes, sir.

Witness excused.

1302 C. W. WHITEHEAD, a witness produced on behalf of the defendant L. C. Boyle, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to direct interrogatories propounded to him by Mr. Boyle, testified as follows, to wit:

Q. What is your name?
—. C. W. Whitehead.
Q. Your residence?
A. I am living just outside of the city limits on Troost avenue.
Q. What business have you been engaged in in Kansas City, Missouri, Mr. Whitehead?
A. Real estate.
Q. How long have you been engaged in that business?
A. 26 years.
Q. What relation, if any, do you sustain to the real-estate organization in the city of Kansas City?
A. President of the real-estate board, and have occupied the position of chairman of the appraisement committee for three terms—I believe, three years.
Q. Are you identified with any business here in the city?
A. I am president of the Missouri Union Trust Company; director of the Union national bank, and director in the Barse Livestock Commission Company.
Q. Do you own any real estate in Kansas City, Missouri?
A. Yes, sir.
Q. Have you dealt in real estate—that is, by buying and selling real estate to any extent in this city?
A. Quite largely.
Q. Are you familiar with the property in the Kansas City bottoms?
A. I think so.
Q. The west bottoms?
A. Yes, sir.
Q. Have you ever owned any property down there, Mr. Whitehead?
A. Yes; own some now.
Q. Have you ever bought and sold property in that vicinity?
A. Yes, sir.
Q. In the vicinity of the stock yards?
A. Yes, sir.
Q. How lately?
A. The last deal I had anything to do with was when the stock yards company made its last extension east from Bell street.
Q. You may state if you have made an examination of the values of real property in the west bottoms in the vicinity of the
1303 stock yards for the purpose of informing yourself of the values of those lands down there specifically?

A. I have just gone over it very carefully in the last few days.

Q. Prior to the last few days did you have any knowledge of values in that locality?

A. General knowledge; yes, sir.

Q. Have your transactions as a real-estate man in these bottoms extended over a period of any number of years?

A. I have been doing more or less business in the west bottoms ever since I have been in the business. I haven't made any sales there lately.

Q. Are you in that line of business?

A. Yes, sir.

Q. You may state if you have loaned money upon property in the west bottoms.

A. I have.

Q. Have you some loans outstanding there now?

A. Yes, sir—that is, the company of which I am president has.

Q. Calling your attention to the west bank of the Kansas river—to that portion of the stock yards there—I will ask you to state to the master if you are acquainted with the values of real estate in that portion of the country.

A. I think I am.

Q. I will call your attention to this portion of the bottoms where the north yards of the stock yards company are located, and will ask you if you are acquainted with the values of lands in that locality?

A. Yes, sir.

Q. You have bought and sold property there?

A. Yes, sir.

Q. Do you know the value of the quarantine yards?

A. Yes, sir.

Q. Marked on the map by the letter C?

A. Yes, sir.

Q. I wish you would state what, in your judgment, that land is worth per acre?

A. Ten thousand dollars.

Q. I now call your attention to D. Do you know the value of that tract?

A. I think so.

Q. What is that worth per acre?

A. Three thousand dollars per acre.

Q. I now direct your attention to the north yards of the company and marked E on the map. Do you know the value of that property east of Water street?

A. Yes, sir.

Q. In your judgment, what is it worth per acre?

A. $17,500.

1304 Q. I now direct your attention to a tract in the same vicinity west of Water street. Do you know the value of that property?

A. Yes, sir; that is low land.

Q. What is the value of that land per acre, in your judgment?

A. About $3,500 per acre.

Q. Do you know the value of this tract of land running from the east side of Ewing street to the State line, or rather to State Line street, thence north to Central avenue, thence west to Ewing street, and thence south on the east line of Ewing street to the place of beginning, marked State Line Improvement Company, being one solid body of land fronting on Central avenue?

A. That piece of land we did not examine when we were down there.

Q. Do you know its value?

A. Yes, sir; I know it in a general way.

Q. You may state what, in your judgment, it is worth per acre.

Mr. Hite objects to the question as incompetent, irrelevant, and immaterial, and for the further reason that the witness is not qualified to answer. Objection overruled.

A. I should say about fifteen or sixteen thousand dollars an acre.

Q. I call your attention to that portion of the Kansas City Stock Yards Company, marked on the map by the letter B, and will ask you if you know the value of that land.

A. I think I do.

Q. What is it worth per acre, in your judgment?

A. $20,000 an acre.

Q. I now call your attention to that portion of the Kansas City stock yards that is marked on the map by the letter A, and will ask you to state if you know the value of that land per acre.

A. Yes, sir.

Q. What, in your judgment, is the value of that land per acre?

A. $37,500.

Q. I will call your attention to some land that is south of the south line of the stock-yards property, in Missouri, and running south from 19th street to Turkey creek, extending west to the State line, comprising about 39 acres. Do you know what the value of that land is per acre?

A. I think so.

Q. What, in your judgment, is it worth per acre?

1305 Mr. Hite objects to the question as incompetent, irrelevant, and immaterial and because the witness is not qualified to answer. Objection overruled.

A. It is worth about fifteen thousand dollars an acre.

1306 And in answer to cross-interrogatories propounded to him by D. R. Hite, counsel for the complainants, the witness testified as follows, to wit:

Q. Do you own some property on Troost avenue?

A. Yes, sir.

Q. How many feet of ground do you own there?

A. Where I live?

Q. Yes, sir.

A. Two hundred feet, running through to Harrison street.

Q. What is that property worth now?
A. I can sell you one hundred feet north of me for four thousand dollars.
Q. That is forty dollars a foot?
A. Yes, sir; running through to the other street.
Q. Is your property about the same value?
A. About the same; yes, sir.
Q. What is it used for?
A. As a residence.
Q. How do you arrive at the value of residence property?
A. Well, its location generally gives it—its location.
Q. The property in the west bottoms would not be a pleasant place for fine dwellings, would it?
A. No, sir.
Q. Did you hear Mr. Whipple testify?
A. Yes, sir.
Q. You heard Mr. Allen testify?
A. Yes, sir.
Q. Did you and Mr. Allen discuss the question of values before you testified?
A. Mr. Allen, Mr. Parker, and myself went over the property together and decided on the values as nearly as possible.
Q. You arrived at a common understanding about it, did you not?
A. Yes; so that the testimony of one will be the same as the other.
Q. I so understand it. So that in the testimony of each of you gentlemen we have the best judgment of all three?
A. Yes, sir.
Q. What is property in the bottoms adapted for, Mr. Whitehead?
A. For wholesale business, railroads, stock yards, heavy wholesale business.
Q. Manufactories?
A. Manufactories.
Q. Anything else? Packing-houses?
A. Yes, sir.
Q. Is there any considerable quantity of land down there at this time that is available for such purposes?
A. No; not very much in large tracts—that is, on this side of the river.
Q. You mean on the east bank of the Kansas river?
A. Yes, sir.
1307 Q. Suppose you had a commis-ion to buy a hundred acres of land down there for stock-yards purposes, do you think you could fill it?
A. I don't think I could.
Q. Do you know anything about the stock-yards business?
A. No, sir.
Q. Do you know the amount it costs to operate stock yards like those?
A. No, sir.

Q. Don't know what their revenues are?
A. No, sir.
Q. Is the value that you place upon the Troost Avenue property a speculative value?
A. The value that is placed on the lot that I spoke of was placed there by the owner.
Q. Do you think there is any element of speculation in that?
A. I think not; I think it is worth it.
Q. For dwelling purposes?
A. Yes, sir; I don't claim that I paid quite that for my own.
Q. I do not want to inquire into your personal affairs at all. I simply took that as an illustration.
—. ——.
Q. You think that lots in the bottoms would not be adapted for dwelling purposes?
A. No, sir.
Q. Am I to conclude from what you have said that the development of property depends upon its adaptation to certain peculiar purposes?
A. Yes.
Q. What is this property marked A, B, C, D, and E worth for stock-yards purposes?
A. I don't know.
Q. What is the value of this property for railroad purposes?
A. I don't know.
Q. What is the value of this property for packing-house purposes?
A. I don't know anything about the packing-house business.
Q. What is the value of this property for wholesale purposes?
A. All this property?
Q. Yes.
—. There are certain parts of it that are quite valuable for wholesale purposes.
Q. What is the value of the aggregated tracts A, B, C, D, and E for wholesale purposes?
A. About the prices I have stated.
Q. You don't know whether it is more or less valuable than that for railroad purposes, do you?
1308 A. I don't think they could all be used for railroad purposes. If it were all thrown open for railroad purposes I don't think it would be worth the prices I have stated.
Q. What would be the value of that property for packing-house purposes?
A. I have stated, I believe, that I don't know.
Q. Do you feel reasonably certain that for railroad purposes and wholesale purposes the figures which you have given are approximately the value; is that true?
A. Yes, sir.
Q. Now, would that depend upon the amount of revenue which these enterprises would gain by reason of their location in this particular place—that is, its adaptability for their purposes?

A. Somewhat; yes, sir.

Q. Do you know of any other location in and about Kansas City, Missouri, or Kansas City, Kansas, that is as well adapted for stock-yards purposes as this, in a general way, taking into consideration the proximity of the packing houses, the railroad terminals, and any other circumstances that might enter into the consideration of the subject?

A. Not with all the terminals in as they are at the present time.

Q. Am I right, then, in believing, Mr. Whitehead, that it is your judgment that under all the circumstances, with the railroads as they are, with the packing-houses as they are, that this is the best location for the Kansas City stock yards?

A. I think so.

Q. You answer that you think it is. Am I to understand that it is the best for the interests of the railroads, the packing-houses, the stock yards, and the people in this vicinity generally?

A. I think so; yes, sir.

Q. When a piece of land is peculiarly adapted for a certain purpose, then it is valuable for that purpose, is it not?

A. Yes, sir.

Q. These pieces of land concerning which you have testified are valuable for stock-yards purposes, are they not?

A. Yes, sir.

Q. Is it not a fact, Mr. Whitehead, that they are more valuable for stock-yards purposes than for any other purpose?

A. They are at present; yes, sir.

Q. That would be true with reference to any stock yards company—this one or any other—would it not?

1309 A. With all the conditions there; yes, sir.

Q. Wouldn't that be equally true if there were eight or ten distinct stock yards companies operating in the same area. To make that clearer, wouldn't that be true if one stock yards company operated E, another operated C, another operated B, and another operated A? Wouldn't that land be equally valuable for those purposes even if those different tracts were operated by different companies or associations as distinct and separate stock yards?

A. I don't see what difference that would make.

Q. Now, I will call your attention to a piece of property that is occupied by Emery, Bird, Thayer & Company, on the corner of 11th and Walnut streets. Now, will you please state the value of that tract of land upon which that firm conducts its retail business? Mr. Allen testified that it was worth from three hundred and fifty to four hundred thousand dollars.

A. I should have to divide it up. I couldn't estimate it without dividing it up. The corner lot, on Walnut street, I should say is worth about from two thousand to twenty-five hundred dollars a foot.

Q. Suppose that store should burn down tonight——

A. (Interrupting.) That is back to the alley.

Q. That is dividing it right in two.

A. Not to the present alley, but to the alley that was there; tak-

ing the Walnut Street and Grand Avenue front and appraising it separately.

Q. That divides the length in two?

A. I took it back to the alley.

Q. That would be twelve feet less?

A. Yes, sir.

Q. Suppose that store should be burned down tonight. Would that property on the corner be worth two thousand dollars a front foot tomorrow?

A. I think so.

Q. Would it because it had a potential value—that is to say, because it is susceptible of being made to pay a revenue on two thousand dollars a foot?

A. Its location would make it worth that.

Q. When you say that its location would make it worth that, do you mean that because its location is peculiarly adapted for that class of business?

A. Yes, sir; I think there are better corners in the city, but that is a good one.

1310 Q. That firm has not always been in its present location, has it?

A. No, sir.

Q. Where did they move from?

A. From 7th and Main.

Q. Was the property they now occupy as valuable before they moved into it as it is now for that purpose?

A. At the time they moved up there there were a great many firms moving up into the same locality, which changed values very greatly in that locality.

Q. Have there been fluctuations in value from 7th street south on Main and Walnut streets?

A. Since when?

Q. Well, say in the last ten years.

A. From 7th street south on Walnut?

Q. Walnut and Main.

A. I think, perhaps, that the only location in Kansas City which has not fluctuated in the last ten years is between 9th and 12th on Main. That has not depreciated in value.

Q. Has there been any increase in value from 9th street to 11th on Walnut in the last ten years, before this exodus up there that you referred to?

A. In 1887 the property was at its highest point, and property has fallen somewhat since that time, I think, on Walnut.

Q. I will ask you to exclude from consideration the period that we call the boom days.

A. That is what I am going back to.

Q. Outside of that, is it not a fact that property has increased in value from 9th to 12th street on Walnut, and particularly since these firms moved up there—about the time that Bulle, Moore, Emery & Company moved?

A. Those firms moving up there made quite a change.

Q. That increase of value, then, was brought about by a sort of centralization of business?

A. Yes, sir.

Q. Has that in any modified way been going on in the wesyt bottoms?

A. I think so. I do not think that property in the bottoms is higher than at the time of the boom. I do not think it is as high.

Q. I am excluding from consideration that period. In placing the values which you have given upon these tracts of land, Mr. Whitehead, you have excluded entirely, have you not, the use to which that land is being put at the present time?

A. In arriving at our values we tried to get the values of
1311 the property that was not affected by any railroad extension or stock-yards extension.

Q. You excluded both?

A. Yes, sir.

Q. Now, would there have been any difference in your conclusion if you had not excluded the railroads—that is, if you had applied to the land that speculative value or prospective value which would grow out of the possibility of the railroads absorbing a considerable part of the land adjacent to the stock yards?

A. We fixed the values by the prices at which property was offered in the same locality where the owners did not expect it to be taken by the railroads or the stock yards.

Q. Suppose that all the destructible property of the stock yards company should be consumed by fire tonight, what would that land comprised in tracts A, B, C, D, and E be worth for any purpose, including stock yards, tomorrow?

A. It would be worth just *was* it is now.

Q. Then, if it is worth six millions of dollars to the stock yards company today for that purpose, if it burned down tonight, would — be worth that much to a new stock yards company tomorrow? Give us the benefit of your best judgment.

A. I think this: That the profits arising from a business does not fix the value of the property on which that business is done.

Q. I am not unprepared for that statement, but can you answer the question?

A. I do not think it is worth that for any purpose.

Q. Including stock yards?

A. I haven't figured it upon your theory, but I have an idea that it runs far above our estimate.

Q. You don't think it is worth that for any purpose, including stock-yards purposes?

A. Not the ground.

Q. But you know anything about the stock-yards business?

A. No, sir.

Q. Suppose you were one of the appraisers to estimate the value of the lands occupied by the store of Emery, Bird, Thayer & Company. Would you place the value of the land one foot with another or would you put one value on one lot and another value on another lot?

A. The corner would be worth more than inside.

Q. How would you average under such circumstances as those?

A. I would figure the value of the inside lots and the value of the corners and make my price accordingly.

1312 Q. Notwithstanding that the use they are put to is all one thing?

A. Yes, sir.

Q. You would do that notwithstanding that fact?

A. Yes, sir.

Q. If you had a commission to buy such a piece of property as that occupied by that store for the purpose of leasing it on ground rent what valuation would you put on the whole tract?

A. I would go over it carefully and fix an estimate; I have not gone over it.

Q. If your estimate should reach four hundred thousand dollars you would apply that estimate to each and every foot of that property, would you not, if it was all used equally by the enterprise?

A. As I said before, I would take the corner and figure what it was worth and then take the inside lots, figure what they were worth, and then fix a value on the whole property.

Q. And then apply it to the whole property?

A. Yes, sir.

Q. Suppose that you had a commission to buy the tract of land that Mr. Allen described and said he had for sale south of the stock yards, south and west, by the acre for packing-house purposes; you would put a valuation upon it by the acre, wouldn't you, and not by corner lots?

A. As I understand it, that is what you are trying to do with the stock yards—put it all in at the higher price.

Q. What would you do in such a case as that if you had a commission to buy ten acres of land down there that Mr. Allen has for sale?

A. I would sell it, so many feet at forty dollars a foot.

Q. Suppose it is not platted?

A. I don't know whether it is platted or not.

Q. If it was not platted, how would you sell it, by the acre?

A. It would not make any difference whether I sold it by the acre or the foot.

Q. You have a property on Troost avenue; is any one foot more valuable than another?

A. There is no corner there.

Q. That property is worth forty dollars a foot and every foot is worth just as much as every other foot?

A. The lots run from Troost to Harrison; we call it forty dollars a foot from street to street.

1313 Q. And every foot is worth just as — every other foot?

A. I think there is no difference. It is all inside. It might be worth a little more where the improvements are. It is all of the same kind.

Q. All perfectly adapted for the same purpose?

A. It is all inside property. If one of the lots were on a corner it would be worth the most money.

Q. But the other property—taking out the 25 feet on the corner, the other property would be worth just the same?

A. Yes, sir.

Q. For dwelling-house purposes, one foot is just as valuable as every other foot?

A. Yes, sir.

Q. I call your attention to A and B, and state that it is in evidence and undisputed that the land comprised in those two tracts is—every foot of it—used for exactly the same purposes—for stock-yards purposes, all of it. Under those circumstances, is not any foot of it just as valuable as any other foot?

A. It might be for stock-yards purposes, but it is not for other purposes. I don't know that it is for stock-yards purposes. It costs more to keep it up along the river bank.

Q. Then wouldn't it be worth more money?

A. Not if it costs more to keep it maintained.

Q. The reason why that is not so valuable is because it costs more to keep it up?

A. That is one reason.

Q. Therefore there is less revenue. Am I right? Am I right in concluding that the revenue derived from property is one of the elements of value?

A. When you put a building on it to rent it—yes, sir.

Q. You say that is true with reference to a building?

A. Yes, sir.

Q. By a building do you mean an office building?

A. Any kind of a structure that will produce an income.

Q. Wouldn't that be true also of a railroad?

A. A railroad is not confined to a particular lot.

Q. That is true; but doesn't the revenue derived from a railroad show the value of that railroad?

A. If they have a lot in a city which is worth $250 a front foot, that does not fix the value of the road-bed through the whole country at the same price.

1314 Q. Is it not a fact, within your experience as a business man and real-estate man, that the revenue derived from property of every class forms an essential element in estimating its value—that is, present and prospective revenue?

A. If there was a banking business being done on this corner which was making large profits that banking business would not fix the value of this lot.

Q. No; I don't mean that, because the revenue there is not derived from the use of the land?

A. No, sir.

Q. But where the revenue is derived from the location and the adaptability of a particular piece of land for the purposes for which it is being used, is not that an essential element in estimating its value—that is, the actual income from the property alone?

A. Yes, sir.

Q. I understood you to say that this land is peculiarly adapted for stock-yards purposes?

A. I think it is very well adapted for the purpose.

Q. And you don't know of any other land in this vicinity that is as well adapted for that purpose?

A. Not with all the conveniences as they are there now.

Q. Now, is it not a fact that this land has a peculiar value for stock-yards purposes for the reasons which you have given?

A. I think so.

Q. Now, please state to the special master what you would determine was the value of that land if it produced a net revenue of six per cent. on a valuation of fifty thousand dollars an acre.

A. If the property will bring that in without the addition of any brains to help the property out, it is worth the money.

Q. Will you be kind enough, please, to state what, in your judgment, the property formerly occupied by Bullene, Moore, Emery & Company at the corner of 7th and Main is worth today per front foot.

A. That lot is peculiarly located; it runs through to Delaware street.

Q. What is it worth?

A. That lot?

Q. Well, we will say property in that vicinity.

A. About eight hundred dollars for the inside lots.

Q. And the corner lot—what would it be worth?

A. About one thousand.

1315 Q. Now, there is a difference, as I understand you, Mr. Whitehead, between the property that is now occupied by that enterprise and that which was formerly occupied by it of about one thousand dollars a foot. Is that true?

A. Yes, sir.

Q. Now, will you be kind enough to state what was the value of that property at 7th and Main at the time these firms moved up towards 11th street?

A. Well, there has been a general moving out of that locality of the better business and there has been quite a falling off in values.

Q. Has it been as much as 66 % falling off?

A. I should think it had been about 50 %.

Q. Has there been a corresponding increase in values in the vicinity to which they have moved?

A. There is other firms who have moved in there also.

Q. Will you be kind enough to give us the benefit of your best judgment respecting the reasons why there has been a decrease in the value of the property in the former location occupied by Bullene, Moore, Emery & Company and an increase of value in property in the locality of their present location?

A. On account of the better firms moving out, the larger firms. I think that has a good deal to do with it, and then this location up here where they are now is better for that kind of business. It is nearer the residence portion of the city.

Q. Peculiarly well adapted for the purpose, is it not?

A. Yes, sir.

Q. In other words, that property at the corner of 7th and Main is not so well adapted for the purposes for which these firms used it formerly as is the property at the present location. Is not that true?

A. It is not as good a location.

Q. Then am I right in concluding from what you have said that the peculiarities of location of property enter very largely into the values of the property?

A. Yes, sir.

Q. That is true?

A. Yes, sir.

Q. Am I right in saying that the adaptability of a peculiar location for a peculiar class of business, as shown by the business that is done there, the amount of business *of business* that is transacted of that nature?

1316

A. Business of whatever kind generally congregate together.

Q. And the amount of business that is done has a relation to the adaptability of the location?

A. That is true; yes, sir.

Q. I believe you said you were interested in some live-stock commission company?

A. The Barse Livestock Commission Company.

Q. They have a particular room in the Exchange building?

A. Yes, sir.

Q. They look upon that room as being valuable to their business, do they not?

A. Yes, sir.

Q. Why, Mr. Whitehead?

A. That is the place where the live-stock business is done.

Q. Its location makes it valuable to them, does it not?

A. Yes; their all being there together.

Q. How about that room as compared with other rooms in the building?

A. I think it is the best room in the building.

Q. By reason of its location?

A. Yes, sir.

Q. And adaptability to the use to which it is being put?

A. Yes, sir; it is right at the main entrance.

Q. Suppose that a railroad wanted to get into Kansas City, Mr. Whitehead, what, in your judgment, would be the locality, considered with reference to real estate, that such railroad company would seek? Would they seek the vicinity of the terminals of other roads, the locations occupied by the wholesale houses, warehouses, packing-houses, manufactories, and stock yards in preference to some other location?

A. Yes, sir.

Q. Do you know of any railroads at this time which are seeking admission into the west bottoms?

A. No, sir; I do not.

Q. Do you know where the Maple Leaf depot is?

A. It runs into the Fourth Street depot, I think.

Q. Do you consider that location as valuable for their purposes or for any railroad purposes as it would be over in the west bottoms?

A. It would be if all the other railroads ran there.

Q. There is really a reciprocal relationship existing between these different and various enterprises, is there not?

A. Yes, sir.

Q. And where they are congregated in large numbers that
1317 makes the location peculiarly adapted for each one of them, does it not?

A. Yes.

Q. In the consultation that you, Mr. Allen, and Mr. Parker had in reference to this matter, Mr. Whitehead, I understood you to say that you excluded from your consideration the value of this property for railroad purposes and stock-yards purposes. Is that true?

A. No, sir. I said we excluded from our consideration the high prices of the few pieces that were bought.

Q. Of the surrounding property?

A. Yes, sir; that is what I intended to say.

Q. Now, with reference to the purchases and sales that have taken place down there in the bottoms, have not the railroads been the most persistent buyers of property down there for the last ten or twelve years, of large quantities?

A. It lies between the railroads and the stock yards.

Q. They both have been persistent buyers, have they not?

A. Yes, sir.

Q. You did not take into consideration, as I understand it, the purchases made of adjacent territory by either one of these interests, did you, in fixing the value of this land?

A. To some extent we did; yes. We felt that those purchases had affected values to a certain extent.

Q. But you did not give them any very great importance in the matter?

A. Not this thousand dollars a foot land.

Q. Did you the $250 a foot land?

A. Not the $250.

Q. Or the $200?

A. I think those purchases affected the prices of the other lands that we considered.

Q. Then you rejected from your consideration the purchases made by these two interests, in so far as you have stated?

A. Yes, sir.

Q. Now, is it not a fact that the railroad companies own for their terminals down in these bottoms something like two hundred acres of land?

A. I could not tell you how much; they own a great deal.

Q. And the land is limited down there, is it not?

A. Yes, sir.

Q. Have you been acting in any advisory or other capacity with

reference to the condemnations of property in the park extensions in this city?

A. Yes, sir.

Q. Now, when you come to consider the value of land, we
1318 will take a dwelling-house for illustration. Do you take into account in fixing its value the adaptability of that particular piece of land for dwelling purposes?

A. Yes, sir.

Q. Now, suppose you were condemning a store building; you would apply a different judgment to that than you would to the other, wouldn't you?

A. Yes, sir.

Q. Suppose you were called upon to act as an appraiser in condemning a street or right of way through that district down there at 11th and Walnut streets, would you take into account the use to which that land was being put by the business firms there in fixing its value?

A. The use would fix its value to a certain extent.

Q. Am I right in saying that the use generally does fix the value of property?

A. The rental income of the property generall- determines the value.

Q. Then, if a piece of property has been leased for a number of years at a rental value—ground rent, we will say—fixed at six per cent. on one hundred thousand dollars, and that has gone over a long period of years, and the person occupying the land has been able to pay his rent promptly, is that a pretty fair indication to the real-estate man in getting at the value of the property?

A. We have to look at the future, to see what it will be in the future.

Q. Assuming there are no clouds in the way of a man's prosperity.

A. That would come pretty nearly fixing its value.

Q. So that the revenue derived from land over a long period of years, where that revenue arises from the peculiar adaptability and the peculiar location of the land, is a very essential element in getting at the value of that land, is it not?

A. You have to take into consideration the chance of the business moving, as it has done from Main street.

Q. But assuming that you can see far enough in the future to be sure it will not move, and you are called upon for your judgment at a given time as to the value of the property, is it not your best judgment that element I have mentioned is a very essential one in arriving at the value of that property?

A. Yes, sir; what it is likely to rent for.

1319 Q. Suppose you were called upon to condemn the Union Depot property down there today; would you take into consideration the use to which it is now being applied?

A. I don't believe I would be very competent on that line of business; I don't know what it is worth.

Q. Well, of course, I would not ask you to give your judgment about what it was worth.

A. I say I would be a very poor man in a determination of that kind.

Q. Wouldn't you consider it in that way, and ascertain what the value of the use was? Why would you be a poor commissioner?

A. Well, I don't know what the value of the property is as a Union depot.

And in answer to redirect interrogatories propounded to him by Mr. Boyle, attorney general, the witness testified as follows, to wit:

Q. You have been inquired of concerning the adaptability of these special tracts of land for stock-yards purposes, and, as I understood you, one of the reasons which you gave Mr. Hite was that the railroad facilities in that immediate neighborhood were good, and that they made it specially attractive for that purpose?

A. Yes, sir.

Q. I will ask you to state to the special master if it requires terminal facilities to make a stock-yards property specially adapted to stock-yards purposes.

A. I think so.

Q. Will you explain what the difference is between terminal and switching facilities?

A. When you spoke of terminals I took it that a switch would answer the purpose.

Q. So I understand you mean by terminals simply the facility for getting at railroads?

A. Yes, sir.

Q. Now, I will state a hypothetical question to you, Mr. Whitehead, if you will be kind enough to answer: The stock yards company owns 142 acres of land near Argentine, and we will presume for the purposes of this illustration that they move their yards to that point; what would be necessary, if you know, to make those stock yards located there as attractive and valuable for the business purposes for which they were being used as the present yards?

1320 A. They would have to get the railroad facilities and packing-houses around them.

Q. Do I understand that you mean by railroad facilities terminal facilities or switch facilities merely?

A. Switch facilities; that is what I have reference to, to get to and from the yards.

Q. Now, how many belt lines are there in the city that connect with the different railroads in the city?

A. Two, I think.

Q. What were they built for, Mr. Whitehead? What is the purpose of a belt line?

A. It is a railroad designed for the switching of cars from one railroad to another and from one business to another.

Q. Are there any railroads here in the city that do not have connection with these belt lines that you know of?

A. None that I know of.

Q. You have stated that the railroad companies and the stock yards companies have been large buyers of real estate down in the bottoms. Have the railroads bought very much land in the bottoms in the last ten years, Mr. Whitehead?

A. I don't think they have; probably from five to seven years.

Q. Mr. Hite asked you in reference to the Union depot. Has property in the vicinity of the Union depot varied; is it valued as high now as it was some years ago?

A. No, sir.

Q. You may state, if you know, whether there has been any discussion about moving the Union depot from where it is now located.

A. I have heard some talk, but I don't know whether there is anything in it or not.

Q. To what portion of the city has the question of its removal been discussed?

Question objected to as immaterial.

Q. Has that had any effect upon the values of real estate in the bottoms in the vicinity of the Union depot?

A. I am not aware that it has been talked of enough to affect real-estate value. The general depreciation of property has made some depreciation there.

Q. Mr. Whitehead, I inquired of you in my direct examination about some property that lies south of the south end of the yards, upon which you placed a valuation of fifteen thousand dollars
1321 an acre. I wish you would tell me what character of business is conducted in that vicinity.

Mr. Hiye objects to the question as incompetent, irrelevant, and immaterial. Question not pressed.

Q. Does it require a very large territory to accom-odate the wholesale district of any city?

A. Not very large; no, sir.

Q. Do you know the area that is used in the wholesale district in this city?

A. No, sir.

Q. Or the city of Chicago?

A. No, sir. I know them pretty well, but I don't know the area of the land used.

Q. Have there been any buildings constructed in the last ten years in the bottoms in this vicinity that have been purchased by wholesale establishments—buildings erected upon property down there that you can now recollect?

A. None that I recollect.

And in answer to recross-interrogatories propounded to him by D. R. Hite, counsel for the complainants, the witness testified as follows, to wit:

Q. What would be the inducements with reference to railroad

facilities that would take the wholesale men into the bottoms with their houses?

Q. The great saving in carting goods back and forth to and from town.

Q. Wouldn't there also be a saving in switching charges if they got right close to the terminals?

A. That is as I understand it. I don't know much about railroads, but that is as I understand it. They save something in switching.

Q. It is your understanding, is it not, that the terminal companies charge something for switching cars from one road to another?

A. I understand so.

Q. Then the inducement for these wholesale men and packers to go near the terminals, as distinguished from these belt lines, is because they get their switching done by the railroads over which their property is transported without paying that switching charge; isn't that the inducement that takes them there?

A. That is one of the inducements.

1322 Q. I call your attention to your testimony concerning the peculiar adaptability of the present location of the stock yards for their purposes. Is it not a fact that if the stock yards were taken away from their present location and situated two or three miles away from there and the railroad terminals and the packing-houses remained where they are that it would seriously impair, if not entirely destroy, the business of the stock yards company?

A. I think it would be very *in*fortunate for them.

Q. Would it not add very greatly, in your judgment, to the expense of transacting the business?

A. I think it would in switching charges.

Q. And in considering that business or any other business would you not take into consideration the appliances that had been built up by 25 years' location in one place, and the fact that it had become the center of the packing business and the center of the railroad terminals, as having a very serious effect upon any question of removal or change from that location to some other location?

A. It would be a very large thing to move.

Witness excused.

The hour of 6 o'clock p. m. having arrived, the master arose and adjourned until 9.30 a. m. Thursday, May 28th, 1897.

1323 WILLIAM S. BEARD, a witness produced by the defendant L. C. Boyle, as attorney general of the State of Kansas, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to direct interrogatories propounded to him by Mr. Boyle, testified as follows, to wit:

Q. Where is your home?

A. Kansas City, Kansas.

Q. How long have you lived there?

A. About 17 or 18 years; lived here prior to that time.

Q. What is your business?
A. Real-estate agent.
Q. How long have you been a real-estate agent?
A. About 12 years.
Q. Where?
A. In Kansas City, Kansas.
Q. Have you ever transacted a real-estate business to any extent in Kansas City, Missouri?
A. No, sir.
Q. In what parts of Kansas City, Kansas, have you had real-estate dealings or transactions?
A. In what is known as Wyandotte, in Armourdale, in old Kansas City, Kansas, but mostly in Wyandotte.
Q. Where is your office?
A. 524 Minnesota avenue.
Q. Is that the principal business street of Wyandotte?
A. Yes, sir.
Q. What is the principal business street of old Kansas City, Kansas?
A. James street.
Q. That is the part that lies between the Kansas river and the State line and north of the Union Pacific tracks?
A. Yes, sir.
Q. How extensively have you dealt in real estate? How general has been your business?
A. All things are relative. My dealings have not been very extensive as compared with those of other witnesses I have listened to last.
Q. Your business has generally been in the sale of small tracts and of less value than those testified to by the other witnesses?
A. Yes, sir.
Q. Pretty large number of transactions?
A. Relatively; it is about an average business such as is done in Kansas City, Kansas.
Q. What is the principal street in Armourdale?
A. Kansas avenue.
Q. Is there a bridge connecting it with Kansas City, Mis-
1324 souri, and with lands of the stock yards company?
A. Yes, sir; the Armourdale bridge.
Q. You have heard some of the testimony in this case, have you?
A. Yes.
Q. You have heard the descriptions of the different tracts owned and claimed by the Kansas City Stock Yards Company?
A. Yes, sir.
Q. Have your transactions been on both sides of the Kansas river?
A. Yes, sir.
Q. Have you ever been a condemnation commissioner to appraise lands and the damages to remaining lands taken by railways?
A. Yes, sir; on one or two occasions; two, I think.
Q. Do you remember what lines of railway they were?

A. Yes, sir; the Kansas City Circular railway. I think it is now called the Union Terminal and I think the other was the same company under a different name.

Q. But they were separate condemnations?

A. Yes, sir; one was in 1891 and the other was two or three years later; perhaps more. I think about two years ago.

Q. I will ask you if you know the value of the lands in the vicinity of the tract marked as C on the map, occupied by the company as quarantine yards on the west side of the Kansas river.

A. Yes, sir.

Preliminary cross-examination by Mr. HITE:

Q. Have you had any transactions of purchase or sale of lands in the vicinity of C in the last five years?

A. No, sir.

Q. Have you had any conversations with anybody who did have transactions in the purchase and sale of lands in the vicinity of C within that time?

A. Yes, sir.

Q. With whom did you have any such conversation?

A. Just now I could not name anybody but Mr. McAlpine, I think.

Q. Have you had any conversation with him in the last five years?

A. No; that was more than five years ago.

Q. Do you know of any person with whom you have talked who has bought or sold property in the vicinity of C within the last five years?

A. I don't think I could name any one.

By Mr. HITE: We do not think he is qualified.

By Judge MARTIN: Did you assist in condemning a right 1325 of way across that tract?

A. Yes, sir.

Q. For the Union Terminal?

A. Yes, sir. I was mistaken in my answer to Mr. Hite; we made this condemnation within the time he mentioned.

By Mr. HITE: Where?

A. Over the ground C.

Q. So you have condemned rights of way over these grounds within 5 years?

A. Yes; one within 5 years and the other within 6 years.

Q. Did you make inquiries at that time as to the value of the land?

A. I did; yes, sir.

Q. In that vicinity?

A. Yes, sir.

Q. Did you also condemn across the tract D?

A. Yes, sir.

Q The Union Terminal crosses that now, does it not?

A. I think so.

Q. Did you make inquiries in relation to prices along there?
A. Yes, sir.
Q. Had two other men to consult with?
A. Yes, sir.
Q. Were they men who were well versed in the values of real estate in that locality?
A. They were generally the owners of the lands.
Q. Did you ever have any lands for sale in the vicinity of these two tracts?
A. No; not very near to them.
Q. About how near?
A. The ones I have are up here in the vicinity of the West Side Improvement Company's land.
Q. How far is that north of D?
A. It is just north of Central avenue.
Q. Where the L road crosses the river?
A. Yes, sir.
Q. Have you anything southwest of C in the bottoms?
A. Yes, sir; but just a few isolated lots; I have some further back.
Q. How much farther back?
A. Six or eight blocks; perhaps even farther than that; ten blocks.
Q. Is that in the valley of the Kaw river?
A. Yes, sir; in Armourdale.
Q. Do you know the value of the tract described as C, per acre?

Mr. Hite objects because the witness has not been shown to be qualified. Objection overruled.

A. Nine thousand dollars an acre for the land.
Q. Without improvements?
A. Yes.
Q. Do you know the value of the land marked D?
A. Yes, sir.
Q. What is that worth, per acre?
A. $5,000.
1326 Q. Per acre?
A. Yes, sir.

Q. I call your attention now to the tract marked D, the north yards of the company; are you acquainted with the value of lands in that vicinity?
A. Yes, sir.
Q. Have you lands for sale in that neighborhood?
A. I have a few lots, I think.
Q. Have you any that you own?
A. Not now.
Q. You are agent for their sale?
A. Yes, sir.
Q. You are authorized to sell them at a certain price?
A. Yes, sir.

Q. Have you talked a good deal with people who own property in the vicinity of the north yards?

A. Yes, sir; I have paid a good deal of attention to the matter of values there.

Q. In late years?

A. Yes, sir.

Q. Do you know at about what lots are selling for and what they are held at in that vicinity?

A. Yes, sir.

Q. Do you know the value of that tract?

A. Yes, sir.

Q. What is the value of that land in the tract marked E, per acre, without the improvements?

A. $15,000 an acre.

Q. Do you know the tract of land lying west of Water street down on the river bank?

A. Yes, sir.

Q. Do you know the value of that tract of land? If so, you may state.

A. Four thousand dollars an acre.

Q. I now call your attention to the tract marked B, being the main yards of the company in Kansas. Do you know the value of that tract of land? If so, you may state what its value is per acre.

A. $20,000.

Q. Do you know the tract of land in Missouri marked A on the map?

A. I am less familiar with than than with the lands on the other side of the land, but I have a judgment as to its value.

Q. You may state what it is worth per acre.

Mr. Hite objects to the question for the reason that the witness is not qualified to answer. Objection sustained.

Q. I will ask you this further question: Do you know the value of the lands in A?

A. I think I do.

Q. What is it?

Same objection. Overruled.

—. $27,500 an acre.

1327 Q. Do you know the value of a tract of land described as follows, to wit: Beginning at the intersection of the south line of 6th street with the east line of Ewing street, in Kansas City, Kansas, thence south along the west line of Ewing street 352.5 feet to the northwestern corner of lot 12 on said Ewing street; thence northeasterly, at right angles with Ewing street, 309 feet to the west line of State street; thence north along the west line of State street 144 feet to the south line of 6th street; thence west — the south line of 6th street 439.5 feet to the place of beginning?

A. Yes, sir; I know that land.

Q. It fronts on what streets?

A. State Line, Central avenue, and also on Ewing street.

Q. Are you acquainted with the value of that tract without improvements?

A. Yes, sir.

Q. How much is it worth per acre without improvements?

Mr. Hite objects to the question as incompetent, irrelevant, and immaterial and because the witness is not qualified to answer. Objection overruled.

A. $20,000 an acre.

Q. Do you know the value of these small tracts marked here on the map by the letter *c*, per acre?

A. Yes, sir.

A. How much is that land worth per acre?

A. I should put it at $17,500.

Q. Did you reside in Wyandotte in 1881, in the spring and summer?

A. Yes, sir.

Q. Do you remember a rise in the Missouri and Kansas rivers about that time?

A. Yes, sir; I remember there was very high water.

Q. What was the condition of this tract west of Water street at that time?

A. It was submerged.

Q. Do you know how deep?

A. I should guess about 12 or 14 feet.

Q. Do you remember whether it extended over any part of the tract marked B?

A. I think it did.

1328 And in answer to cross-interrogatories propounded to him by D. R. Hite, counsel for the complainants, the witness testified as follows, to wit:

Q. Will you be kind enough to point out on this map any property that you know the price of at this time from anybody who has purchased it?

A. Lot 4 James street.

Q. Where is that; between what streets?

A. It is about here.

Q. North of Pacific avenue?

A. Yes, sir; the numbers begin at Pacific avenue, running north.

Q. Where is the other piece?

A. No. 34 James street.

Q. Is that in the same block?

A. About a block north.

Q. Where is there any other piece?

A. I think there is no lot right along here in the same block.

Q. Do you know the price from actual sale?

A. I did not say that.

Q. Do you know of any property on this map that has been bought and sold within the last five years?

A. Oh, well, that is — very different question, as I understood you.

Q. Do you know of any piece of property on this map of your own knowledge that has been bought and sold within the last five years, and the price of it?

A. Why, I think I can recollect some sales.

Q. Please do so, Mr. Beard.

A. I think these lots in here; I believe there are eight or ten lots in here that were sold on Wood street, south of Central avenue. I think that is the location.

Q. Who sold those lots?

A. I don't know who the owners were.

Q. To whom were they sold?

A. Mr. Bridgens, I think, bought them.

Q. What year?

A. I suppose it was two years ago, or three, perhaps.

Q. What did he pay for them?

A. I can't tell exactly, but I should say in the neighborhood of seventy-five or eighty dollars a foot.

Q. Who told you that he paid that for them?

A. I could not tell that. I know that there were a number of sales in here that were talked about more or less at the time, and those are the prices as I remember them.

Q. Do you know what that corner, the southwest corner of Wood street and Central avenue, is held at?

A. I don't know what it is held at.

1329 Q. What has it been held at during the last five years?

A. I don't know; it has been held at very high prices.

Q. And yet you say that Mr. Bridgens bought these ten lots in here for seventy-five dollars a foot?

A. That is my recollection of it.

Q. You don't get that recollection from anything Mr. Bridgens told you?

A. Probably not.

Q. You don't know whom he bought they from?

A. No.

Q. Have you made any inquiry lately to verify your recollection?

A. No.

Q. Do you know of any other transactions of actual sales and purchase in that vicinity?

A. Recently?

Q. Within the last five years.

A. I cannot specify any; no, sir.

Q. Have you made any inquiries to ascertain the prices at which property has been held in here for the last five years, Mr. Beard?

A. Oh, yes.

Q. Of whom did you inquire?

A. I only remember one inquiry, and that was in answer to other questions. Mr. Schiller stopped at my place a month or so ago, and in the course of a conversation he spoke about these lots and he named a price.

Q. What price did he name?

A. I don't remember; it was so much beyond anything in reason that it had no interest for me and I didn't pay very much attention.

Q. Have you made any other inquiry?

A. I haven't inquired about property there.

Q. Is it not a fact that the only inquiries you have made have resulted in giving you figures about three times as high as those you have put upon this land?

A. I don't know whether they were three times as high or not; I put it at $17,500 an acre; $1,750 a lot; that would be eighty dollars a foot.

Q. About seventy dollars; you put it on the basis of ten in an acre?

A. Yes, sir.

Q. 25-foot lots?

A. Yes, sir.

Q. Has anybody within the last five years told you that they would sell their property or that they held it at seventy dollars a foot within a thousand feet of the tract marked E?

A. This one right here; wouldn't it be less than that? I guess it would; this one also.

1330 Q. Has any one told you within the last five years that they would take seventy dollars a foot for property within a thousand feet of E?

A. Yes, sir; right here; lot 34 James street.

Q. Mr. E. E. Holmes told you that.

A. Yes, sir.

Q. How many lots has Mr. Holmes there?

A. I don't know, I am sure; one, I guess.

Q. How about lot No. 4 James street?

A. I believe that has a very good house on it; a very much better improvement than this. I think that was about $125 a foot.

Q. Who told you that, Mr. Beard?

A. Mr. Lippincott.

Q. When was it that he told you that?

A. I should say it was two or three weeks ago.

Q. Mr. Lippincott said he would sell his property for $125 per front foot?

A. Yes, sir; three thousand dollars for the lot; about $125 a foot.

Q. And you say Mr. Holmes offers his lot for sale at seventy dollars a foot, does he?

A. Yes, sir.

Q. To whom did he offer it?

A. To me.

Q. When?

A. About the same time. I should say two or three weeks ago.

Q. Do you know of any others?

A. I know that No. 36 James street, a few days ago Judge Cable told me he had it for sale. I think it was two thousand dollars

Q. Is that seventy dollars a foot? Those are 24-foot lots in there, are they not?

A. I think they are 24 feet.

Q. Is that seventy dollars a front foot? Of course, I don't mean to confuse you, Mr. Baird. It is more than seventy dollars a foot, is it not?

A. I did not say that that was seventy dollars a foot.

Q. Is it not more than seventy dollars a foot?

A. I should think it was nearly eighty.

Q. It is over eighty, as a matter of fact?

A. Yes, sir.

Q. Now, do you know of any transactions, outside of the sale to Mr. Bridgens, that have actually been made at less than one hundred dollars a foot in the last five years; just one single transaction?

A. There was a lot sold right here, either 5 or 7 James
1331 street, in that vicinity, for, I am pretty sure it was in the neighborhood of three thousand or thirty-five hundred dollars; it has a pretty good brick house on it. William Smith was either the purchaser or the seller, I don't just remember which.

Q. Was the house worth a thousand dollars?

A. Well, it probably was worth about that much. It would cost more than that to replace it.

Q. That would have put the lot at twenty-five hundred dollars?

A. Yes, sir.

Q. Is not that one hundred dollars a foot?

A. Yes, sir.

Q. A little more than a hundred dollars a foot, is it not?

A. Yes, sir.

Q. Do you know of a single transaction of purchase and sale within the last five years anywhere in the vicinity you have testified about for less than one hundred dollars a foot, except the same to Bridgens?

A. I can't specify details, but it seems to me I have known of some others, but I won't try to specify them.

Q. You do know of one where the property brought for the naked land more than a hundred dollars a foot within the last five years—the one that you have just spoken about?

A. I hardly know how to estimate that house. It is a pretty good house.

Q. Do you think it is worth more than a thousand dollars?

A. It would probably cost in the neighborhood of eighteen hundred or two thousand dollars to build such a house. It has depreciated somewhat with time. I should say that probably one hundred dollars a foot for the land would be about right.

Q. I call your attention to the tract marked C over here that you have testified about. Will you please state any transaction that you know of in the last five years wherein property has been sold for less than seventy dollars a foot in that vicinity?

A. No; I don't know of any.

Q. Do you know of the sale by Mr. Haines of the Hopkins planing-mill tract?
A. Yes, sir; I know of it in a general way.
Q. Do you know what he got for it?
A. I have heard, but I couldn't swear to the figures.
Q. Have you made any purchases or sales of real estate over in the vicinity of C in the last five years?
1332 A. You mean within the limits of C?
Q. I mean within five hundred feet of it in any direction.
A. No, sir.
Q. Well, within a thousand feet in any direction?
A. No, sir.
Q. Have you made any sales or purchases of real estate within three thousand feet of the tract marked B in any direction?
A. Not within a few years.
Q. In the last five years?
A. No, sir.
Q. Have you made any sales or purchases or been interested in any sale or purchase of any property in the vicinity of the tract A, within six or eight blocks of that property, within the last five years; I mean, of course, of your own knowledge?
A. In the bottom, you mean?
Q. Yes, sir.
A. No, sir.
Q. Then, if I understand the matter correctly, you are testifying to these values from knowledge that you gained in condemnation proceedings with reference to the Union Terminal Railway Company, and this sale to Mr. Bridgens that you have heard of, and the sale down here on James street that you heard of, and these two pieces of property that are being held at less than a hundred dollars a foot; is that true?
A. No; that is not quite true; that is not correct. I have interests in Armourdale—some lots.
Q. How far from C?
A. On old 15th street and Osage street.
Q. How far would that be, Mr. Beard?
A. I should say about ten blocks.
Q. Anything nearer than that?
A. No; but that would be close enough to make me interested in anything that occurred in that vicinity as to valuations.
Q. And out of that interest has grown your information with reference to this matter?
A. Largely.
Q. Now, between the lots on 15th street and the tract C the town of Armourdale lies, does it not?
A. Part of it.
Q. Nearly all of it—the business part of it?
A. Oh, no.
Q. But most of the business part?
A. Yes; the major part of it—the retail business.

Q. Now, you place a valuation upon these little tracts
1333 marked E of $17,500 an acre, I believe, Mr. Baird?

A. I ask to recall that and make it the same as this.

Q. If there is any distinction in your mind will you please point it out?

A. I don't think there is much distinction between the two tracts.

Q. Which estimate do you wish to stand?

A. I think there is very little difference. I said it was worth $17,500, but I would rather put it all at $15,000.

Q. You think the tracts marked *e* are worth $15,000 an acre?

A. I think so.

Q. Do you know what the stock yards company paid for *e*?

A. I could not specify in detail.

Q. Have you ever made any inquiries to ascertain what they paid for it?

A. I never made a special investigation. I heard at the time, but I could not tell now.

Q. Did you take that information into account when you put your valuation upon this property?

A. No, sir.

Q. You have excluded from your investigation into this matter the purchases by the largest purchaser?

A. Not necessarily.

Q. Did you consider them at all?

A. Not as a leading element in establishing values; no, sir.

Q. Did you consider the prices paid by railroad companies in the last ten years for lands?

A. Not as a leading element of value.

Q. Did you consider the prices paid by the packing-houses in the last ten years for land?

A. Yes, sir; I have considered them.

Q. Do you know the prices that any packing-house paid for land in the vicinity of any of the land you have testified to?

A. I have understood that their land was given to them sometimes.

Q. Do you know of any place where they have bought land—do you know of any purchase by a packing-house?

A. I knew of the Kingan purchase at the time.

Q. How long ago has that been?

A. I should say eight or ten years.

Q. You don't know of the purchases by the Fowlers?

A. Yes, sir; I knew of them.

1334 Q. How much did they pay for their land?

A. I don't know how much they paid.

Q. Have you made any inquiries to ascertain what prices have been paid for lands other than the sale of a lot here and there and the other place?

A. Yes, sir.

Q. Of whom have you inquired?

A. I could not specify the names, places, or dates.

Q. Do you know of any transaction involving the purchase and

sale of more than — acre of land in the bottoms in the last five years, of your own knowledge?

A. Whether I know of my own knowledge the details of any such transaction?

Q. No; the prices paid.

A. I can't specify any at present.

Q. Is it not a fact, Mr. Beard, that most of your real-estate knowledge grows out of little transactions in buying and selling lots in Armourdale and up on the bluffs in Wyandotte and around in there?

A. Yes, sir.

And in answer to redirect interrogatories propounded to him by David Martin, counsel for the defendant L. C. Boyle, attorney general of the State of Kansas, the witness testified as follows, to wit:

Q. Mr. Beard, you say that lot 4 on James street is near Pacific avenue?

A. Yes, sir.

Q. Very close to it?

A. Yes, sir; it is the second lot, I think; No. 2 would be the first lot.

Q. It has the advantage, then, of being on James street and near Pacific avenue?

A. Yes, sir.

Q. And has a house on it?

A. Yes, sir.

Q. How much is the house worth?

A. I should say six or seven hundred dollars.

Q. What do you say you understood it sold for?

A. The price was three thousand dollars.

Q. What is the size of those lots?

A. I think those lots are 24 ft.

1335 Q. The three thousand dollars included the improvements on it?

A. Yes.

Q. You say that lot 34, James street, was sold, as you understand?

Q. Well, it was not sold; a price on it was given to me.

Q. How much?

A. Sixteen hundred dollars, which would — $66.66 a foot.

Q. Any improvements on that?

A. A small house.

Q. Rented?

A. Yes, sir; I suppose so; it seemed to be in fair condition.

Q. Now, that is only held at sixteen hundred dollars with the house on it?

A. Yes, sir.

Q. You say that James street is the best street in that place?

A. It is the principal street.

Q. How would you say lots on James street and in that locality would compare with lots on Water street?

A. Which side of Water street?

Q. East side.

A. I should say they were worth a good deal more.

Q. How would they compare with the lots on Armstrong street in value?

A. I should say it was worth more.

Q. How would it compare with lots on Wood street?

A. I think they are more valuable than any lots in that part of the city.

Q. Do the prices or values increase or decrease going east from Water street to James street?

A. I should think they would increase.

Q. You say you know how property is held on Bunker street?

A. No, sir; I didn't say.

Q. When did Bridgens buy those lots next north of the yards?

A. Two or three years ago, as near as I can remember.

Q. Do you know why he bought them or with what view?

A. No; I don't.

Q. Was it since or before the time the stock yards company commenced to buy land again in that vicinity?

A. I think it was since they began buying.

Q. Do you know whether he bought with a view of improving them or of holding them for sale to the stock yards company or held them for sale to somebody else or anybody else?

A. He bought them for somebody else, as an agent or trustee, I have understood.

Q. What was this Holmes lot that you spoke of?

A. House and lot at 34 James street.

1336 Q. And what was the lot that Lippincott offered for sale?

A. That was No. 2 James street, as I remember it.

Q. In a good locality or an indifferent one?

A. It was very good ground on James street; very good locality; very close to Pacific avenue.

Q. What was the value of the improvements on that?

A. I should think the house was worth six or seven hundred dollars.

Q. You spoke of lot 36, James street, being for sale or sold at two thousand dollars.

A. Mr. Cable told me that he had that lot to sell at two thousand dollars.

Q. Now, what improvements are there on that?

A. A cottage—a three-roomed house—I guess.

Q. Worth how much?

A. $250 or $300.

Q. You spoke of another lot as being 3, 5, or 7 James street, with a good brick house on it. How much would you say that house was worth?

A. I should say it was worth at least a thousand dollars; perhaps more.

Q. Is that in a good locality in James street or in an indifferent one?

A. That is a very good locality. It is about opposite No. 2 that I have mentioned.

Q. Has there been any considerable quantity of lands sold in that vicinity in the last five years other than to the stock yards company?

A. Very little.

Q. Do you know why people have not sold?

A. Had no opportunity, I guess.

Q. Mr. Hite limited your vicinity as to sales and what property was held at as being on this map. The furthest extent of this map is Central avenue?

A. I believe so.

Q. That is only a short distance. Do you know the property north of Central avenue and in this vicinity?

A. How it is held?

Q. Yes.

A. I know of a number of lots two blocks north of Central avenue.

Q. On what streets?

A. It is three blocks north on Armstrong. A number of lots were sold in there for somewhere in the neighborhood of forty to fifty dollars a foot.

1337 Q. How does that land lie in comparison with the lands further south along there?

A. It lies a good deal the same.

Q. That land is farther out, near Kaw point, where the Fowler packing-house is?

A. Yes, sir.

Q. You say it is held there at forty dollars a foot?

A. A number of lots sold at that, I understand.

Q. Do you know how they hold property out there generally?

A. Why, I inferred that that was about the price; that was what I learned in ascertaining prices there.

Q. Except as affected by the position of the property and the demand for lands for the extension of the stock yards, do you know of any reason why that property is any less valuable than that surrounding the stock yards or just north of the stock yards?

A. I think there is very little difference at present in the value of those lots contiguous to the yards and these lots I have referred to in the north end of the peninsula for any use for which there is a present demand.

Q. What is the character of the dwelling-houses all through that part of the country?

A. All of a very low grade, indeed.

Q. Do they yield much rent?

A. No, sir.

Q. Are rents on the rise or on the fall?

A. I think they have been about where they are now for a long time in that locality.

Q. And as to prices of lots now, in comparison with a few years ago. Are they higher or lower than they were five or ten years ago?

A. It seems to me there is very little difference. I sold one lot in Gunn's subdivision north of Gentral avenue nine years ago, maybe ten years ago, and I don't think it has varied ten per cent. in that time, as nearly as I could watch it. I have frequently inquired about it.

Q. Mr. Beard, do you know how property is held in the vicinity of C and D and that country around there in Armourdale, in comparison with what it was a few years ago?

A. I should say there is very little difference; somewhat lower.

Q. Is there much property changing hands in that vicinity or west of it, through Armourdale, or in the bottoms?

A. Very little, indeed.

1338 Q. How are rents in that locality; have they risen or fallen?

A. I think they are about stationary.

And in answer to recross-interrogatories propounded to him by D. R. Hite, counsel for the complainants, the witness testified as follows, to wit:

Q. You said that James street was the best street over there, did you?

A. I think I said it was the principal street.

Q. Is that portion of James street lying south of Central avenue a good portion of James street?

A. Why, for some things; yes, sir.

Q. Is it a good place for dwellings?

A. Not extra, but it is fully as good as the other end of it.

Q. Do you consider that the best part of James street?

A. There is very little difference, very little choice between the cattle pens on one side, on the one hand, and cattle pens and hog pens on the other side, on the other end; there is very little difference.

Q. Mr. Beard, how deep was the water over there in 1881?

A. I could not state specifically from memory about the depth of the water except on 9th street and Central avenue.

Q. Was there any water north of Central avenue in 1881?

A. Yes, sir; I think so; in localities, not generally.

Q. South of Central avenue?

A. Yes, sir.

Q. All covered, was it?

A. I don't know anything about it; I didn't see that.

Q. Now, is it not a fact that the lots on James street between Central avenue and Pacific avenue are from three to five feet below grade?

A. I should say very little; they might be a little below, but not very much; they are slightly below grade.

Q. Didn't the city put in a fill of from five to six feet down there since 1881 on Central street?

A. Perhaps they did; I am not sure about that.

—. You are speaking of the lots down there at the corner of Pacific avenue and James street. Is it not a fact that they face that viaduct and that there is not room for a wagon to pass another in there?

A. There is plenty of room for two wagons to pass; at
1339 least they often do pass, but I believe that does face the viaduct; yes, sir.

Q. That would make it very undesirable for dwelling purposes, would it not, or for any other purpose?

A. It would be some detriment, I should presume; possibly.

Q. Now, the only actual transaction that you know of down there in the bottoms was that house and lot at 5 or 7 James street, that sold for three thousand dollars, and the Bridgens transaction, in the last five years; isn't that true?

A. Oh, no.

Q. You know of some other actual transaction, do you?

A. I know of others, but I could not specify the details; I knew of them at the time.

Q. You don't remember anything about them now?

A. No.

Q. Am I correct in understanding you to say, Mr. Beard, that there has not been any change of any consequence in the prices of real estate down there in the bottoms in the last eight or ten years; is that correct?

A. That was true with reference to the lot that I spoke of there.

Q. In your judgment, as a real-estate man, is not that substantially true?

A. Well, there have been considerable fluctuations in prices, great fluctuations in prices during that time.

Q. I mean has there been any rise or fall in the general scale of values of real estate?

A. I don't think there has been any great change in the general range of values.

Q. In the last eight or ten years?

A. Yes, sir; that would not be true of prices, of course.

Q. You think there is a difference between values and prices, do you?

A. I certainly do.

Questions by Mr. DANA:

Q. Is it not true, Mr. Beard, that the Metropolitan Street Railway Company has a line running on James street from Central avenue north?

A. Yes, sir.

Q. That turns off of James street into Central avenue and goes to the State line east?

A. Yes, sir.

Q. Is it not true that in old Kansas City, Kansas, the most
1340 desirable and the most used part of the city for business is on Central avenue from the south line of James street, say a

block or two, towards the river, and from James street north over Central avenue along the line of the street railway, as to retail business, saloons, groceries, and things of that kind?

A. I think that is true.

Q. That part of James street lying south of Central avenue and ending at Pacific avenue and at the yards of the Missouri Pacific Railway Company is a sort of a pocket, is it not, out of which you can only get by going over the viaduct which crosses over the railroad yards and goes on over to 12th street, three or four blocks away?

A. Of course the viaduct is used.

Q. Is it not a kind of a pocket?

A. It never occurred to me exactly that way.

Q. Is it a thoroughfare?

A. It is not a main thoroughfare.

Q. The main thoroughfare on James street ends at Central avenue, does it not?

A. Yes, sir.

Q. Is it not a fact that the Armour Company has within the last few years bought all of the property east of the city hall and up to James street?

A. I believe that is true.

Q. Do you know what prices they paid for it?

A. I do not.

Q. If you should learn upon inquiry that they paid one hundred dollars a foot, would that change your views in respect to the value of this property down here?

A. It might modify it slightly.

Q. You would still think this property was not worth that much, would you?

A. Wasn't worth a hundred dollars a foot?

Q. Yes.

A. Yes; I should still think so.

Q. You wouldn't think it was worth a hundred dollars a foot if all the property around it was selling for a hundred dollars a foot, would you?

A. I am hardly prepared to say that. Of course, if there was a demand for all the property about it at one hundred dollars a foot the chances are there would be a demand for that at the same price.

Q. You know of the demand of the stock yards company for land marked *e*?

A. I understand they own it.

Q. And you know that Armour & Company have been
1341 purchasing land in the last four or five years east of the city hall on James street?

A. Yes.

Q. And you only know of two actual transactions, one of which was more than a hundred dollars a foot, that you can name; isn't that true?

A. How is that question?

Q. You only know of one transaction of less than a hundred dollars a foot of the sale of property in that vicinity in the last five years that you can name?
A. That is all I can name.
Q. And notwithstanding those facts you still think this property in here is not worth a hundred dollars a foot?
A. Yes, sir.

And in answer to redirect interrogatories propounded to him by David Martin, the witness testified as follows, to wit:

Q. Speaking about James street and Central avenue; is there anything of a pocket there?
A. It never occurred to me that way; it is true there is a viaduct there which obstructs the view somewhat in front of those houses, but I don't think it is a serious obstruction.
Q. 9th street is the same as Central avenue?
A. Yes, sir; and Pacific avenue and St. Louis avenue are the same.
Q. That is, St. Louis avenue in Kansas City, Mo., and Pacific avenue in Kansas City, Kansas, are the same?
—. ——.
Q. And 9th street in Missouri is the same as Central avenue in Kansas?
A. Yes, sir.
Q. Central avenue in Kansas was originally platted as 6th street?
A. Yes.
Q. So that 6th street in Kansas was identical with 9th street in Missouri?
A. Yes, sir.
Q. What are the thoroughfares between the two cities?
A. James street and Central avenue is one route, and James street and St. Louis avenue the other; I think those are the routes mostly used.
By Mr. DANA: You don't mean to have the court understand that James street and Pacific avenue are any such a thoroughfare as Central avenue and James?
A. Well, of course, not with reference to passenger traffic; all kinds of traffic.

Witness excused.

1342 W. S. BEARD, a witness heretofore sworn on behalf of the defendant L. C. Boyle, recalled for further examination by Judge Martin:

Q. Do you know the location of lots 108 to 118 Water street?
A. Yes, sir.
Q. What is their size?
A. They are 24 feet front and 120 feet deep.
Q. Now, are you acquainted with lots 144 to 151 Water street?
A. Yes.
Q. What is their size?

A. They are all average lots except 151 and 152, which are narrow lots—I think 17 feet.

Q. How about lots 144 to 150; you are acquainted with those lots?

A. Yes, sir.

Q. What is the size of them?

A. Those are regular size—24 by 120.

Q. Do you know lot 152 Water street?

A. Yes, sir. That is a narrow lot—17 feet front.

Q. Do you know about the value of those lots?

A. Yes, sir.

Q. I will ask you what is the value of lots 108 to 118, either per front foot or by the acre.

By the MASTER: What are those lots?

By Judge MARTIN: They are lots that were owned by the company and deeded to Colonel Morse, I think, in 1880.

A. About 60 to 65 dollars per foot.

Q. Do you know the value of lots 144 to 152?

A. Yes, sir.

Q. What is the value of them?

A. There is very little difference, if any.

Witness excused.

1343 ELLIOTT E. RICHARDSON, a witness produced by the defendant L. C. Boyle, as attorney general of the State of Kansas, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to direct interrogatories propounded to him by David Martin, Esq., counsel for said defendant, testified as follows, to wit:

Q. State your name in full.

A. Elliott E. Richardson.

Q. Where is your home?

A. Kansas City, Kansas.

Q. How long have you lived there?

A. Three years.

Q. Where did you live prior to living in Kansas City, Kansas?

A. In Kansas City, Missouri.

Q. How many years?

A. Since 1874.

Q. What is your present position with reference to the Kansas City Stock Yards Company?

A. Secretary and treasurer.

Q. How long have you occupied those places or either of them?

A. I have been in this position for 23 years, but not always as secretary and treasurer.

Q. What relations have you sustained to the company in those 23 years?

A. I came here first as cashier, then assistant secretary and assistant treasurer, and then secretary and treasurer.

Q. How long were you cashier after you came here?
A. A year or two. I have got these dates in the other room, but I cannot remember them now.
Q. I am not particular about the exact time. How long were you assistant treasurer and assistant secretary?
A. Several years.
Q. And ever since that time you have been secretary and treasurer?
A. Yes, sir.
Q. Who is the president or chief officer of the corporation?
A. Mr. Charles Francis Adams.
Q. Where is his home?
A. In Boston, Mass.
Q. How long has he been president of this stock yards company and its predecessors?
A. I think he was elected in 1875.
Q. And has been president ever since?
A. Yes, sir.
Q. Has the company any officer in Boston except the president?
1344 A. We have a financial agent, Mr. Charles Merriam.
Q. He is secretary of the company, is he not?
A. No, sir; he used to be secretary.
Q. How long was he secretary?
A. Eight or ten years, I guess; up to the time that I was elected secretary and treasurer, and he has been the Boston financial agent ever since.
Q. What is the nature of his relation to the company?
A. He does all the financial business of the company at that end; is clerk of all the meetings of the board of directors held in Boston.
Q. Do you know who keeps the original stock certificate books of the company?
A. That is kept in Boston.
Q. Do you know who keeps it?
A. It is under Mr. Merriam's supervision.
Q. Do you know who keeps the account there, if anybody, of the stock of the company—that is, of the stock issued, of the transfers of stock, the sales of stock, and the present holders of stock?
A. Mr. Merriam.
Q. How do you become familiar with these facts here with reference to the stock?
A. I get a list of the stockholders from time to time.
Q. How long has Mr. Merriam been financial agent and keeper of this stock account?
A. He has been financial agent ever since I was elected secretary and treasurer of the company, and he has kept the stock books for the past four or five years, I believe, for convenience.
Q. Prior to four or five years ago, did you keep the stock book here?
A. Yes, sir; for a few years.

Q. What relation, if any, does Nathaniel Thayer sustain to the company?

A. He is a stockholder and director.

Q. Is Charles Francis Adams also a director?

A. He is a stockholder and director.

Q. Is Mr. Merriam a stockholder and director?

A. Yes, sir.

Q. Do you know what other books and accounts are kept in Boston besides those you have mentioned?

A. Personally I do not know of any.

Q. Do you get communications from Mr. Merriam as to the contents of any other book or the entries of any other book than that in relation to stock?

A. I get transcripts of his transactions each month.

1345-1381 Q. Do you know whether he keeps a cash book there or not?

A. I do not of my own knowledge.

Q. Do you keep a cash book here?

A. We do.

Q. Who has general charge of the account books of the company here?

A. I have charge of all the books here.

Q. What books are kept here?

A. The general books of the company.

Q. W-at are they?

A. Ledger, cash book, daily journal, transfer journal.

Q. Live-stock record?

A. Yes, sir.

1382 Q. Will you get your book or books containing your profit and loss account from 1884 down to the present time?

The witness does so.

Q. How is that book described?

A. Ledger E of the Kansas City Stock Yards Company.

Q. When does it begin?

A. January 1st, 1884.

Q. Did you keep what was called a labor account among your transactions?

A. Yes, sir.

Q. What is the general nature of all items placed in labor account?

A. All labor. All labor that goes into the operating expenses of the yards.

Q. Does it include officers expanses?

A. Yes, sir; everything.

Q. Salaries?

A. Salaries and everything.

Q. Do you keep a repairs account?

A. Yes, sir.

Q. What goes into repairs account?

A. All costs of labor and material that went to pay carpenters for repairs on the yards.

Q. Would that include renewals, for instance, of a pen or anything of that sort that would be replaced by a new or better one?

A. It would go into that account.

Q. Do you keep an account of cleaning yards?

A. Yes, sir.

Q. What does that include?

A. Wages paid the gang of men for cleaning the yards.

Q. What is the process of cleaning the yards?

A. Well, they have horses and carts; they clean the alleys and pens.

Q. What do they do with the stuff that is accumulated and that is placed in the carts?

A. They dump it out on the river bank.

Q. Where?

A. Along the river here, up and down.

Q. Any particular place?

A. Wherever it is most needed.

Q. Needed for what?

Mr. Hite objects to the question as incompetent, irrelevant, and immaterial and because the witness is not qualified to answer. Objection overruled.

A. For filling in the land or for dumping ground for the refuse.

Q. Where is the refuse dumping ground?

1383 A. It is up and down the river bank *er bank.*

Q. How far up and down?

A. The whole length of our property.

Q. Then it has not all been emptied exclusively on the property just west of Water street?

A. We dump in there.

Q. But not exclusively?

A. No, sir.

Q. Is this material needed for other places, did you say?

A. Not now; it is dumped along the river bank where we can dispose of it.

Q. How dispose of it?

A. Get it out of the yards in the cleaning of the yards and alleys.

Q. Can you throw it into the river anywhere along the yards that you desire?

A. We do not throw it into the river; we throw it on the banks.

Q. Well onto your banks?

A. Yes, sir.

Q. What sort of material is that as to its adhesive and filling qualities; is it as good as clean dirt or better?

A. I could not testify to that.

Q. How long have you been dumping this stuff taken from the yards in the cleaning process west of Water street and west of the north yards?

A. I don't know, sir.
Q. Do you keep an expense account?
A. Yes, sir.
Q. What does that include?
A. That includes such items as advertising, traveling expenses of agents, stationery, fuel, and postage.
Q. Do you keep an insurance account?
A. We do.
Q. What does that incl-de?
A. Premiums each year on policies of fire insurance on the company's property.
Q. Any other kind of insurance?
A. Boiler and employés' liability insurance.
Q. Do you insure your employés against accidents or other casualties?
A. We have done it; we don't now.
Q. Do you carry tornado insurance?
A. That is covered by the insurance.
Q. Do you keep an account of the lease of Missouri Pacific yards?
A. We did; yes, sir.
Q. What was that for; what did it include?
1384 A. Land leased from the Missouri Pacific Railway Company for yard purposes.
Q. Do you keep an account of rent of Union Pacific yards?
A. Yes, sir.
Q. What did that include?
A. Same thing.
Q. Do you keep an account of rent of west side yards?
A. Yes, sir.
Q. What is that for?
A. That includes land leased from the Union Pacific for yard purposes.
Q. Where is that tract?
A. Just across the river, north of the McAlpine tract.
Q. Your improvements extend over onto that leased land?
A. Yes, sir.
Q. From whom is that land leased?
A. Union Pacific Railway Company.
Q. Do you keep a taxes account?
A. Yes, sir.
Q. What does that include?
A. Taxes on all our pr-perty—State, city, and county—in both States.
Q. Personal and real?
A. Yes, sir.
Q. Including improvements and everything?
A. Yes, sir; taxes of all kinds, except special taxes.
Q. Would it make any difference whether the land was inside or outside of the yards, as to paying taxes?
A. No, sir.
Q. Do you keep an account of loss and damage to stock?

A. Yes, sir.
Q. What does that include?
A. That includes all losses from stock that is lost, injured, or damaged in any way.
Q. Did you keep an account for a time of F. E. Short & Company, managers of the horse and mule department?
A. We did; yes, sir.
Q. What was that for?
A. That was their proportion of the earnings for handling that department.
Q. Take it now as to labor account. Does that include the work of the employés of the horse and mule department?
A. It does; yes, sir.
Q. Do you keep a separate and distinct account as to that department, or is it included in the general labor account? Is there any division on the account between the horse and mule department and the rest of the yards?
A. We put it in one account, but we have a way of getting at it in statements. We make statements from that account showing the different departments.
Q. Do you keep a like account with W. S. Tough, as man-
1385 ager of the horse and mule department?
A. Yes, sir.
Q. And the labor in that department is included in the general labor account?
A. Yes, sir.
Q. How do you separate the amount paid for keeping the horse and mule department from that in the operation of the balance of the yards?
A. From statements made to us by the managers.
Q. In 1884 did you keep an account called K. C. Land & Dredge Co.?
A. We did.
Q. What did that include?
A. I could not tell without looking that matter up. They were dredging in the river.
Q. Do you know what they were dredging in the river for—that is, so far as the stock yards were concerned?
A. I don't remember.
Q. Now, were there any other accounts kept from 1884 to 1896, inclusive, as to the expenses of the company other than those I have mentioned here?
A. You have mentioned all there are in these books. I could not answer that without referring to each book. These ledgers each cover two years.
Q. I find I have omitted two items. Here is an interest account *account*. What is that for?
A. That is interest on money that we used.
Q. There was an account part of the time called switching account. What was that for?
A. That was at the time that Olcutt ran his packing-house two

miles and a half west of here. His stock was shipped from the yards inn the care of the company, and we paid the switching charges.

Q. When was that?

A. I can't tell from memory. It is not in either of these years—1884 or 1885. It comes in later books.

Q. Are there any accounts that you remember of, showing expenditures of the company for the year, other than those accounts that I have mentioned?

A. Not in those two years, sir.

Q. Do you know of there being any in any other years?

A. I would have to look at the books.

Q. That is, there might have been less accounts in 1884 than in subsequent years?

A. Yes, sir; more or less.

Q. Coming, now, to the accounts for moneys received, revenues of the company, do you keep a yardage account?

A. Yes, sir.

1386 Q. What did that include?

A. It included the yardage on all kinds of stock weighed in the yards.

Q. Do you keep an account of hay?

A. Yes, sir.

Q. What does that include?

A. Receipts from hay sold and feed.

Q. Just hay?

A. Nothing else in that account; that is all.

Q. Did you keep a grain account?

A. We do.

Q. What did that include?

A. Receipts from grain sold; earnings from grain sold.

Q. That corn, oats, etc.?

A. Yes, sir.

Q. Did you keep an account called horse and mule market account?

A. Yes, sir.

Q. What did that include?

A. That includes earnings from the horse and mule market.

Q. That includes everything?

A. No, sir; all but the commissions; everything but commissions.

Q. Do you keep a separate account of horse barn No. 2?

A. Yes, sir.

Q. What does that include?

A. That includes the receipts from that barn.

Q. Is that what is called the Gould barn?

A. Yes, sir.

Q. What is it used for?

A. For feeding and taking care of horses.

Q. Is that a part of the horse and mule department?

A. No, sir; it is a separate matter.

Q. That is reported directly to the general office and not to the manager of the horse and mule department?
A. Reported directly to this office.
Q. Do you keep a commission account?
A. We do.
Q. What does that include?
A. Commissions received for horses sold at the horse and mule department.
Q. Do you keep a loading and unloading account?
A. Yes, sir.
Q. What does that include?
A. Money received for loading and unloading stock.
Q. Do you keep a rent account?
A. We do.
Q. What does that include?
A. Rent from the exchange building and other buildings leased.
1387 Q. If you have a building outside of the yards the rental is included in the rent account?
A. Yes, sir.
Q. Do you keep an account of dividends on bank stock?
A. We do.
Q. What does that include?
A. Dividends on the stock held by the company in the Interstate national bank.
Q. Do you keep a trackage account?
A. We do.
Q. What does that include?
A. That trackage account is what we received from the Olcutt Company at the time they were in operation.
Q. For what track?
A. We paid the Belt Railway Company so much for switching cars to the Olcutt Company, and the trackage was what we received from the Olcutt Company.
Q. Do you keep an interest account?
A. Yes, sir.
Q. What does that include?
A. Interest on loans. We try to keep our surplus cash invested.
Q. To whom do you loan money? I do not mean to what particular persons, but to what class of persons. On what class of loans do you collect interest?
A. I have nothing to do with that; it is done in Boston.
Q. Do you keep an account of Kansas City Belt Railway Company stock?
A. We did one year.
Q. What was that for?
A. We helped to start the Belt Line road, and that was what we got out of it. We sold it out to the present company.
Q. Do you keep a bran account?
A. We do.
Q. What does that include?

A. Sale of bran sold to stockmen.

Q. Do you keep a conscience-fund account?

A. We do.

Q. Pretty large?

A. Not very.

Q. What does that include?

A. It includes one or two items where employés sent in money to the company which they said they had stolen. There are one or two items, I believe.

Q. They repented of their evil, did they?

A. Yes, sir; one man is crazy; went crazy after he returned the money.

Q. Premium on capital stock. Do you keep an account of that kind?

A. Yes, sir.

Q. What does that include?

A. That includes premium on capital stock sold above par.

1388 Q. Now, do you keep an account called income or net profits?

A. Income account; yes sir.

Q. To show the net profits?

A. Yes, sir.

Q. What does that income account include?

A. Income account covers the profits or losses for the year less the dividends. We charge into that account all the profit and loss account and all the dividends that are paid.

Q. Does it include the dividends?

A. At the close of the year the dividends paid in that year are charged into that account and all profit or loss is charged into the account and we call it income.

Q. That account is intended to show the net profits—the difference between the income and the expenditures?

A. Yes, sir.

Q. Do—Mr. Richardson, do you remember any other accounts that were kept from time to time from 1884 to 1896, inclusive, than those which have been mentioned?

A. I could not tell without referring to each year's books.

By Mr. BOYLE:

Q. I would like to have it explained a little more clearly what this income account is.

A. You might call it surplus, if you like. The income account, as I say, is the account into which we close up all our profit and loss transactions, earnings and expenses and all of our dividends. The balance is surplus. We leave it under the name of income. It is the account into which all the other accounts are closed in order to show what the net income is for that year.

Q. All of these accounts which you have particularized closed into profit and loss account at the close of the year?

A. Everything.

Q. And this profit and loss account is closed into income account?

A. Yes, sir; the net profits or net losses, whichever it may be.

Q. And what else does it show?

A. The income account shows the total amount of dividends paid during the year.

Q. And the amount of the net profits?

A. Yes, sir.

Q. Can you make a statement showing separately the expenses of running the horse and mule market business and also the expenses of this Gould barn separately for the year 1896?

A. Yes, sir.

1389 By Judge MARTIN: We now offer in evidence copy of profit and loss account and of net income account made by Mr. Stagg and Mr. Riggs from the books of the company.

Counsel for the complainants take the same for examination.

Thereupon the master arose and adjourned until 10.00 o'clock a. m., Thursday, June 3, 1897, at the stock yards.

Morning session.

THURSDAY, *June* 3, 1897.

Taking of testimony resumed.

ELLIOTT E. RICHARDSON on the stand.

By Mr. HITE: We have examined the paper handed us by Judge Martin, and we admit that it is a correct copy of the profit and loss account, as shown in such exhibit, but we object to its admission in evidence as incompetent, irrelevant, and immaterial. Objection overruled.

Said paper is marked Exhibit 4, C. H. N., and is herewith returned.

By Mr. HITE: It is admitted that the paper marked Exhibit 5, C. H. N., is a correct transcript of the income account of the stock yards company, as stated in such exhibit, but we object to its admission in evidence as incompetent, irrelevant, and immaterial. Objection overruled.

Said exhibit is herewith returned.

By Mr. HITE: It is admitted *said* said Exhibits 4 and 5 are correct copies from the books of the company.

Q. Have you prepared a statement of the receipts and expenditures of the horse and mule department for the year 1896?

A. Yes, sir.

Q. Is this it?

A. It is.

The same is marked Exhibit 6, C. H. N.

Q. In the profit and loss account, just offered and received in evidence, for the horse and mule department for the year 1896, I see you have horse-barn account, horse and mule market, $28,134.44,

and commission account, $19,116.20, while in the statement
1390 which you say you have prepared the receipts are mentioned as being $77,090.49. How do you account for the discrepancy?

A. The cost of feed, $29,839.85, should be added to the profits of the horse and mule department, $28,134.44, making $57,974.29, to which add commissions, $19,116.20, earnings of blacksmith shop, $748.85; total, $77,090.49. Those are the total receipts of the horse and mule department for 1896. This statement shows the gross earnings, and the net earnings, which are $11,934.20.

Q. The $28,134.44 in the profit and loss account shows what?

A. Shows simply the net profits on the feed—net earnings on the feed.

By Judge MARTIN: We offer this statement, Exhibit 6, in evidence as the testimony of Mr. Richardson on this subject.

By Mr. HITE: We have no objection to the form, but object to the statement, to the evidence, as incompetent, irrelevant, and immaterial. Objection overruled.

Q. Did you prepare a statement of the receipts and expenditures of horse barn No. 2 for the year 1896?

A. I did; yes, sir.

Q. Is this it?

A. Yes, sir.

Marked Exhibit 7, C. H. N., and herewith returned.

Q. It is correct, is it?

A. Yes, sir.

By Judge MARTIN: We offer — in evidence as part of the testimony of the witness on the subject.

By Mr. HITE: We have no objection to the form, but objection to the evidence as incompatent, irrelevant, and immaterial. Objection overruled.

Q. Can you tell by your own knowledge or by reference to your books how much money the stock yards company had on hands here, including money in the bank subject to check, March 13, 1897, at the date of the commencement of this suit, at the close of business—rather March 12, 1897?

A. $105,205.27.

Q. During the years 1893, 1894, 1895, 1896, and up to the close of business March 12, 1897, did you receive from Boston any money other than the $200,000 about which you testified yesterday; if so, how much and when?

Counsel for the complainants object to the question as in-
1391 competent, irrelevant, and immaterial.

A. I did not.

Q. By "I did not," you mean the company did not?

A. I did not handle it. I didn't receive any cash from Boston.

Q. On what funds were the drafts drawn in May and June, 1894, amounting to $20,000?

Objected to, and sustained.

Q. To what fund were the drafts entered on your books, which were drawn in May and June, 1894, amounting to $200,000?

A. Mr. Hite objects to the question for the reason that it is incompetent, irrelevant, and immaterial. Overruled.

A. Credited to Mr. Merriam's account and deposited in the bank.
Q. Mr. Merriam is treasurer?
A. I am treasurer of the company.
Q. Why would you credit Mr. Merriam with them?
A. Mr. Merriam is the Boston financial agent on whom I drew the drafts.
Q. Were the drafts entered as charged to any particular fund?
A. They were not.
Q. What is the name of the bank in which your company has some stock?
A. The Interstate national bank.
Q. It is located here at the stock yards, is it not?
A. Yes, sir.
Q. Do you know whether there was any premium on that stock on the 12th or 13th of March, 1897?
A. I could not tell what the market value was on that day. I don't know.
Q. What funds, if any, did you transmit to Boston by draft or otherwise in 1893, 1894, 1895, 1896, and up to March 12th, 1897?

Mr. Hite objects to the question as incompetent, irrelevant, and immaterial, and not tending to prove any matter in the order of reference. Overruled.

A. In 1893, $448,684.60; in 1894, $257,001.95; in 1895, $299,489.90; in 1896, $365,400; in 1897, to March 12, $120,000.
Q. What is the total?
A. $1,490,574.50.
Q. Where are the dividends paid?
A. At the Boston office.
Q. None paid here?
A. None at all.

Witness excused.

Agreement of parties showing amount of feed purchased in 1896 admitted in evidence, marked Ex. E E; agreement in respect to earnings in 1896 admitted, Ex. F F; statement of cost of land owned by def't Co. admitted, Ex. G G.

1392 WILLIAM J. STAGG, a witness produced by the defendant, L. C. Boyle, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to direct interrogatories propounded to him by David Martin, Esq., counsel for said defendant, testified as follows, to wit:

Q. State your name.
A. W. J. Stagg.
Q. Where is your home?
A. Topeka, Kansas.
Q. What is your age?
A. 47.
Q. What is your business or occupation?
A. Accountant.
Q. How long have you been an accountant?
A. I guess about 25 years.
Q. Where?
A. In Kansas.
Q. What has been the nature of your work during those 25 years?
A. Examination of county books, bank work, mercantile work, and in fact nearly all branches of mercantile book-keeping.
Q. Public accounts?
A. Yes, sir.
Q. What are some of the works you have done in that line?
A. From 1868 to 1872 I was acting treasurer of Shawnee county and kept the books pertaining to the office; subsequently in a bank as assistant cashier, and afterwards as cashier in Topeka; after that I was auditor for the George W. Crane Publishing Company for about eight years, and the balance of the time has been spent in doing expert work, with the exception of a year and a half, when the board of county commissioners put me in charge of the office of county clerk by reason of the inability of the officer elected to perform the duties.
Q. What work have you done particularly as an expert accountant?
A. I don't know that I could enumerate all of the work, but I recently investigated the affairs of the Kansas National Bank of Topeka for the stockholders, made an extensive examination of the affairs of the Western Investment, Loan & Trust Company, which was an adjunct of the Kansas national bank, and various small things besides.
Q. Are you acquainted with the system of double-entry book-keeping?
A. I think so.
Q. Have you recently made an examination of the account
1393 books of the Kansas City Stock Yards Company?
A. In a degree; yes, sir.
Q. What accounts particularly have you examined?
A. Land account, profit and loss account, and income account.
Q. Did you examine into the stock account?

A. Yes; and stock account.
Q. How far back did you examine the stock account?
A. From 1872 to December 31, 1896.
Q. All the books relating to the capital stock?
A. From the organization of the company, as I understand it, in 1872, down to December 31, 1896.
Q. From that examination are you able to state the amount of capital stock at different periods?
A. Yes, sir.

Preliminary examination by Mr. HITE:

Q. How long a time have you spent in examining the books of account of the Kansas City Stock Yards Company?
A. The examination has been very meagre. The books were not accessible, and the information that I received was in great measure from Mr. Richardson, the secretary and treasurer of the company, from the books.
Q. Any statement that you may make with reference to the result of your investigation of the books would be largely based upon what Mr. Richardson told you?
A. Upon the showing of the books; yes, sir.
Q. Mr. Stagg, is it possible for an accountant to testify for or against a corporation or business concern from an examination of one account without going through the rest of the books?
A. It is certainly owing to what that examination is for. If you will permit me to say so, I accepted the showing of the profit and loss account as being correct statement out of their books, and from that I made this report.
Q. Have you ever taken a trial balance of the books of the Kansas City Stock Yards Company?
A. No, sir.
Q. Do you know whether the profit and loss account is correct or not?
A. I do not, sir.
Q. Do you know whether all items of expense have been charged into profit and loss account or not?
A. Of my own personal knowledge, I do not.
1394 Q. Have you ever examined the books of the stock yards company to see whether they had any expense account other than that charged in the profit and loss account?
A. I have not, sir.
Q. Have you ever examined the balance-sheet of the stock yards company any further than the profit and loss account?
A. No, sir.

By Mr. HITE: I do not think the witness is competent to testify to any results from the books. I do not think there is any question of Mr. Stagg's competency to examine the books, but his examination has not gone far enough and is not sufficiently thorough to enable him to testify intelligently to what the books show. The master overruled the objection.

Direct interrogatories resumed by Judge MARTIN:

Q. Have you examined the stock account from 1872 down?

A. Yes, sir.

Q. From that examination can you tell what amount of stock purports to have been issued from the beginning of the company down to the present time?

A. I can.

Q. State how much.

A. $7,368,650.

Q. How much of that appears to have been paid for in cash?

A. I will have to refer to my memorandum; I cannot remember it. Do you want it in detail?

Q. Yes; first give the aggregate amount.

A. $817,400.

Q. Are there any items in doubt?

A. There are several items which I have separated here. The original capital stock in 1872 was $96,000. I assume that that was paid in cash. The next cash payment appears on July 31, 1876, $3,000; the next on August 9th, $65,000; the next on August 31st, $4,000; September 30th, $1,000; April 30th, 1878, $37,400; August 30th, 1878, $5,000; June 7th, 1881, $15,000; June 3, 1887, $30,000; October 31, 1887, $505,000; December 30th, 1890, $900; June 12th, 1893, $55,100; that is all of that, I believe.

Q. How much was the stock dividends in the whole time?

A. $2,291,083.

Q. What are those stock dividends—that is, from what sources are they derived?

Mr. Hite objects to the question as incompetent, irrelevant, and immaterial, and for the reason that it asks the witness something outside of what the books show. Objection overruled.

1395 A. From earnings of the company.

Q. Will you give the items forming the $2,291,083?

A. Yes. March 31, 1785, $48,000; December 27, 1875, $48,000; December 30, 1876, $66,300; November 30, 1877, $331,300; November 3, 1878, $235,000; October 31, 1887, $456,933; December 31, 1890, $404,000; July 31, 1894, $266,684; September 24, 1894, $1,416; June 30, 1896, $433,450.

Q. Now, taking out the $817,400 paid for in cash from the $2,291,083, what does the rest of the stock appear to be?

A. $4,260,167 is the amount.

Q. From what sources is that derived?

A. I can only testify as to what the books show. I have no personal knowledge of the matter. On November 3, 1878, the capital stock was increased by a bonus to Fowler Brothers $40,000. June 1st, 1884, capital stock was increased by a charge to construction account $995,000; October 31, 1887, capital stock was increased by estimated increased valuation of lands $1,058,067. June 12, 1892, capital stock was increased by company's donation to Armour

$500,000. March 3, 1894, capital stock was increased by the sum of $1,667,100.

Q. Are those all the amounts?

A. Yes, sir.

Q. From what source was that stock derived?

A. I don't know.

Q. You say the first appears as a donation to Fowler Brothers?

A. Yes.

Q. That appears from the books?

A. Yes, sir.

Q. The $995,000 is what; what is it shown to be?

A. Increase at the reorganization; two shares in the new company for one share in the old company. The capital stock before that rested on the books at $995,000 in round numbers. I think there was an error of $200 which was subsequently corrected. The stock was increased to $1,990,000 by a new issue of $995,000.

Q. Does it appear that any cash or any other thing of value was received for that?

A. No, sir.

Q. Now, take the $1,058,067. What was that derived from, according to the books?

A. Estimated increased valuation of lands.

Q. Does it appear that any money or other valuable thing was ever received for that stock?

A. No, sir.

1396 Q. Now, what is the $500,000?

A. That appears to be stock issued to Armour.

Q. Does it appear that any cash or any other valuable thing was received for that?

A. No, sir.

Q. As to the $1,667,100, what does that appear to be?

Mr. Hite objects to the question as improper, and suggests that the witness be required to testify to what the books show and not what may appear to the witness.

Q. Does it appear from the books of the company that any cash or other valuable consideration was ever paid to the company for that stock?

Mr. Hite objects to the question for the reasons stated. Objection overruled.

A. It does not appear to be cash or any value whatever.

Q. Have you examined the books of the company as to net profits and cash dividends, stock dividends, and surplus prior to 1884?

By Mr. Hite: We object to any inquiry into the condition of things before this corporation was organized.

Objection overruled.

A. So far as pertains to net profits, I did not examine the books prior to 1884.

Q. Have you examined as to cash dividends or surplus?
A. Yes, sir; I have a statement of that character.
Q. You may state what the books show the net profits were for 1884.
A. $219,727.83.
Q. How much cash dividends were paid that year?
A. $119,391.
Q. How much surplus?
A. $130,180.33.
Q. Now, for 1885, what were the net profits?
A. $287,007.28.
Q. What were the cash dividends?
A. $149,250.
Q. What was the surplus?
A. $267,938.11.
Q. What were the net profits for 1886?
A. $290,394.89.
Q. What were the cash dividends?
A. $119,400.
Q. What was the surplus?
A. $438,933.
Q. What were the net profits for 1887?
A. $324,264.03
Q. What were the cash dividends?
A. $150,600.
Q. What were the stock dividends, if any, that year?
A. $456,933.
Q. What were the cash dividends in 1887?
A. $150,600.
Q. Was there a stock dividend that year?
A. Yes, sir.
1397 Q. How much?
A. $456,993; and a further increase of $1,058,067, which was not a stock dividend.
Q. Amounting in all to how much?
A. $1,515,000.
Q. Now, what was the surplus that year?
A. $155,664.03.
Q. How much cash was paid in that year?
A. $535,000.
Q. In 1888 what were the net profits?
A. $342,309.80.
Q. What were the cash dividends?
A. $282,800.
Q. What was the surplus?
A. $215,173.83.
Q. In 1889 what were the net profits?
A. $363,599.58.
Q. Cash dividends?
A. $323,200.
Q. Surplus?

A. $255,573.41.
Q. Net profits in 1890?
A. $447,683.78.
Q. Cash dividends?
A. $323,200.
Q. Was there any stock dividend that year?
A. Yes, sir.
Q. How much?
A. $404,000.
Q. Was there any surplus that year; if so, how much?
A. It is on the reverse side of the book; it was overdrawn.
By Mr. HITE: Do you call that a surplus?
A. No, sir; I have stated it in red ink.
Q. What was the amount?
A. $23,942.81.
Q. Was that surplus or deficit?
A. It was a deficit in the surplus account.
Q. Was there any cash paid in that year?
A. $9,000.
Q. What were the net profits for 1891?
A. $425,489.18.
Q. What were the cash dividends?
A. $311,143.
Q. Surplus?
A. $90,403.37.
Q. Net profits in 1892?
A. $465,356.77.
Q. Cash dividends?
A. $370,592.
Q. What were the stock dividends that year?
A. $500,000 to Armour.
Q. What was the surplus that year?
A. $185,167.74.
Q. What were the net profits in 1893?
A. $541,817.70.
Q. Cash dividends?
A. $296,694.
Q. Surplus?
A. $430,291.44.
Q. Any cash paid in that year?
A. Yes.
—. How much?
A. $55,100.
1398 Q. What were the net profits in 1894?
A. $626,882.29.
Q. What were the cash dividends?
A. $451,133.50.
Q. Stock dividends, if any?
A. $266,684 and $1,416.
Q. What was the $1,416?
A. Stock scrip.

Q. What was the surplus that year?
A. $339,356.23.
Q. Now, was there any stock issued that year?
A. Yes, sir.
Q. How much?
A. $1,667,100.
Q. That is what you have testified to before?
A. Yes, sir.
Q. Now, what were the net profits in 1895?
A. $610,907.
Q. Cash dividends?
A. $554,816.
Q. Were there any stock dividends?
A. No, sir.
Q. Any surplus?
A. No, sir.
Q. What were the net profits in 1896?
A. $655,811.15.
Q. What were the cash dividends?
A. $429,160.50.
Q. Stock dividends that year?
A. $433,450.
Q. What was the surplus?
A. $188,647.88.
Q. Have you made a computation of the percentages of net profits upon the capital stock during those different years?
A. Yes, sir.
Q. What are they?

Objected to as immaterial. Objection sustained.

Q. Have you made a statement of the earnings of the company for the year 1896 from the books of the company?
A. I have.
Q. State what the number of cattle received by the company was during the year 1896 as shown by the books of the company.
A. 1,714,532 head.
Q. How much did they charge per head?
A. 25 cents.
Q. Amounting to how much?
A. $428,633.
Q. How many calves?
A. 100,166.
Q. At what price?
A. Ten cents per head.
Q. Amounting to how much?
A. $10,016.60.
Q. How many hogs?
A. 2,605,575.
Q. At what rate?
A. Eight cents per head.
Q. Amounting to how much?

A. $208,446.
Q. How many sheep?
A. 993,126.
1399 Q. At what price?
A. Five cent
Q. Amounting to how much?
A. $49,656.30.
Q. Now, the total would be how much?
A. $696,751.90.
Q. Does it appear from the books that any smaller amount than that was received?
A. Yes, sir.
Q. How much smaller amount?
A. $31,093.85.
Q. Leaving how much?
A. $665,658.05.
Q. Do the books show the reason for this discrepancy?
A. No, sir.
Q. Are you enabled to account for the discrepancy?
A. Applying the amount charged for the various kinds of stock, the amount derived should be larger than the amount they charge themselves with. I may state the percentage is 4.46269%.

Mr. Hite moves to strike out the answer of the witness, as it does not throw any light upon the issues. Motion overruled.

Q. What do the books show as the amount received for hay in 1896?
A. $112,769.58.
Q. How much for corn?
A. $36,914.11.
Q. For horse and mule account?
A. $56,990.67.
Q. From dividends on bank stock?
A. $2,400.
Q. From interest account?
A. $2,336.53.
Q. From bran account?
A. $437.13.
Q. From loading and unloading account?
A. $76,803.
Q. From premium on capital stock?
A. $855.
Q. Total gross earnings?
A. $1,023,870.20.
Q. How much was labor account for 1896?
A. $211,262.19.
Q. Repairs account?
—. $32,521.95.
Q. Cleaning, year's account?
A. $8,117.09.
Q. Expense account?

A. $66,191.65.
Q. Insurance account?
A. $12,836.
Q. Rent of Missouri Pacific yards?
A. $400.
Q. Rent of Union Pacific yards?
A. $800.
Q. Rent of west-side yards?
A. $6,000.
Q. Taxes account?
A. $22,671.25.
Q. Loss and damage stock account?
A. $1,292.77.
1400 Q. W. S. Tough, manager horse and mule department, account?
A. $5,967.15.
Q. Total of all those items?
A. $368,059.05.
Q. Net profits how much?
A. $655,811.15.
Q. What was the percentage of that to the stated capital?

Objection as immaterial. Objection sustained.

By Judge MARTIN: We offer to prove by this witness that under the new rates prescribed by the recent act of the Kansas legislature, on the basis of the business transacted in 1896 and allowing all the matters of expenses exactly as they were in 1896, without any deductions for any purpose, and estimating hay at $7.50 a ton and corn and oats at 20 cents a bushel, the company would earn 5.16% on $7,368,650 stated capital.

By Mr. HITE: We have no objection to the witness testifying on that subject.

Q. Mr. Stagg, I will ask you, on the basis of the facts stated in the offer, what the percentage would be.

A. The percentage is 5.16 per centum on the stated capital.

By Mr. DANA: You mean the capital that the judge states?

A. No; the capital of the company.

Q. Now, assuming that the actual capital was only $3,108,483, what would be the percentage of earnings on the basis heretofore stated?

A. 12.24 per cent.

Q. Now, suppose the capital were $4,775,583, what would the percentage be?

A. 7.96.

By Judge MARTIN: We offer these tables for the information of the master.

And in answer to cross-interrogatories propounded to him by Mr. Hite, counsel for the complainants, the witness testified as follows, to wit:

Q. When did you examine the books of the Kansas national bank?

A. About three or four months ago.
Q. Did they keep a profit and loss account?
A. Yes, sir.
Q. What items did they charge into profit and loss account?
1401 A. All items of expense.
Q. What do you consider items of expense?
A. Labor, salaries, rents.
Q. Does it make any difference, in your opinion, what the title of the account is as to its being an expense account?
A. Not at all, sir.
Q. Do you know anything about the stock-yards business as such?
A. I do not.
Q. Do you know whether the items which are charged in the profit and loss account as expenses are really expenses or not?
A. No, sir.
Q. Have you ever made an examination of the stock yards company's ledgers with reference to the accounts covering the items of expense?
A. No, sir.
Q. You don't know whether the profit and loss account shows a balance sheet of the books, do you?
A. No, sir.
Q. You have testified here that the profits in 1896 were $665,000, in round numbers. You take that as the credit balance of profit and loss account, don't you?
A. It is the difference between the two sides of the profit and loss account.
Q. It is the credit balance, is it not?
A. Yes, sir.
Q. You don't know whether all the expenses of the stock yards company appear in the account, do you?
A. No, sir.
Q. Did you ever examine a set of books like this before?
A. I don't know very much about these books except these specific pages. I never saw the cash book or the journal except a few specific pages.
Q. You testified to $817,400 being paid in for stock. You have reference now to the time prior to 1884 as well as subsequent?
A. From 1872.
Q. Do you know anything from the books of the company that you have examined with reference to the reorganization of the company and its business in 1884?
A. Nothing except what is stated in the capital-stock entries.
Q. Don't you know as a matter of fact, Mr. Stagg, that the stock yards company as it exists at this time is a new corporation?
A. I don't know a thing about it.
Q. Do you know whether the $1,990,000 of capital stock
1402 with which the present company started in 1884 was paid for in cash or not?
A. I only judge from the entries on the book.

Q. Does the entry say that it was not paid for in cash?
A. It does not say so in so many words.
Q. Does it in a few words?
A. In my judgment, it was not paid for in cash.
Q. What is your judgment based on?
A. On the journal entry.
Q. Do you mean to say that it was not paid for in actual cash or in anything of value?
A. I don't think they paid anything of value.
Q. Where do you get that idea?
A. From the same entry.
Q. What does the entry say that gives you that idea?
A. I cannot repeat it now. The last paragraph of the entry is to the effect that two shares of stock of the new company were issued for one of the old.
Q. Is there anything in the books that indicates to your judgment that the old company had a considerable amount of property which was conveyed by it to the company in consideration for this stock?
A. I don't know anything about it.
Q. You don't know as a matter of fact, do you, whether that stock was paid for in property or not?
A. No, sir; I do not, personally.
Q. So that when you testify that only $817,400 was paid for in cash, you mean that it appears to have been paid for in currency, in the actual cash; is not that true?
A. I believe that is correct.
Q. Have you made such an examination of the books of the company as will enable you to determine how much of the net earnings of the company have gone into betterments?
A. No, sir.
Q. You can't testify to that at all?
A. No, sir.
Q. It might be five millions or more or less, might it not?
A. It might be any sum you care to believe it.
Q. Is it not a fact that in order to enable you to go fully into this question it would be necessary to make an examination of the entire set of books and make an inventory of the property on hand from which to start?
A. If it was a question of closing up the business, that would be the proper method.
Q. Is not that the proper way to determine the profits or
1403 losses of a business?
A. Yes, sir.
Q. Suppose you had to determine the profits made by a grocery store in a year, how would you proceed to do it from their books?
A. I should have to take an inventory, of course.
Q. You would start from that inventory?
A. I should have to.
Q. You would take all the expense items and charge them into profit and loss?

A. Yes, sir.

Q. And then you would take the entire income and credit it to profit and loss?

A. Yes, sir.

Q. And the balance, less the inventory, would show how much money they had made, wouldn't it?

A. Yes, sir.

Q. You couldn't say that of any business without going through the books and taking off a balance-sheet?

A. No; not be absolutely sure of it.

Q. Mr. Stagg, I wish you would state to the special master whether it makes any difference in keeping a set of books what the accounts are called.

A. If the expense account and income account are disclosed from the nature of the business it doesn't matter just what the accounts or the captions may be called.

Q. You could call them expense account, renewal account, repairs account, or anything you chose?

A. Yes; it wouldn't affect the result at all.

Q. You are unable to tell from your knowledge of the stock yards business whether renewals and repairs would be proper expense accounts?

A. I know nothing about that.

Q. So that the entire information that you desire to convey by your testimony is merely what you have gathered from what you have examined?

A. Yes, sir; the various accounts I have examined, that is all.

Q. And if they have called that an expense which is not so, that would vary your testimony, of course, to that expense, would it not?

A. If there were any items improperly entered there it would vary it somewhat.

Q. Mr. Stagg, you examined the account of this corporation called the construction account, did you not?

A. No, sir; not in detail.

Q. You never had a copy of that account?

1404 A. No, sir; we examined what *what* is known as the land account. Construction enters into that at different periods, but I would gather from that there is a separate account called construction account that was finally merged into the land account.

Q. In the account, which we will term the land account, that you examined, did you find in there a considerable amount charged in the account in 1896?

Judge Martin objects to the question as not proper cross-examination. Objection sustained.

—. Mr. Stagg, you have testified about income, dividends, and surplus each year, have you not?

A. Yes, sir.

Q. Do you know that your testimony on those subjects is correct or is it mere surmise?

... That is the showing from the books.

Q. Do you mean that it shows on the face of the books or on the face of those accounts?

A. On the face of those accounts.

Q. Did you examine to see whether or not this company keeps two profit and loss accounts?

A. I don't know anything about that.

Q. Mr. Stagg, suppose that the company keeps a construction account, and in that construction account there were charged during 1896 $181,000 for renewals. In your judgment, as an expert accountant, should that make any difference in the net profits or not?

Objection as not proper cross examination. Objection sustained.

Q. In your examination of the books of this company did you examine the land account?

A. Partially; not by myself, but in company with other parties.

Q. Did you ever examine the land account of any other company?

A. There is oftentimes an account in books called real-estate or land that I have examined.

Q. What did this land account that you examined contain?

A. A description of the real estate and what purports to be the original consideration.

Q. Into what book is that land book posted?

A. I don't know; there are some auxiliary books, I think.

Q. Did you find any entries in the ledger from which these accounts in the book were posted?

A. I did not see the ledger land account at all.

1405 Q. What other accounts in the ledger did you look at besides profit and loss and income?

A. None whatever.

Q. Didn't see any other accounts at all?

A. Only capital stock account.

Q. You looked at the capital stock account?

A. Yes, sir.

Q. Have you testified from that account in your testimony?

A. Yes.

Q. Did you ever examine the capital stock account of any other corporation?

A. Yes, sir; very frequently.

Q. What should the capital stock account of a corporation show, Mr. Stagg?

A. It should show the cash received from the sale of stock and the accumulation of earnings in the shape of a surplus fund or stock dividends.

Q. You say that should show in the capital stock account?

A. Yes, sir.

Q. Should the capital stock account show the amount of cash dividends paid?

A. No, sir.

Q. It never shows that?

A. No, sir.

Q. What kind of an account shows that?
A. It comes from the profit and loss account; you might call it surplus profit.
Q. Did you find any such account as that in this ledger?
A. I didn't ask for it.
Q. Did you find any such an account?
A. No, sir.
Q. How do you know how much dividends this company has paid?
A. From the statements of the profit and loss account and the income account.
Q. Is there anything in the profit and loss account about the amount of dividends paid?
A. In the statement that was handed to me by Mr. Richardson it purported to be a statement of the cash di-dends paid from 1872 to 1896.
Q. So you have testified from the statement given to you by Mr. Richardson?
A. Yes, sir.
Q. In that statement given to you by Mr. Richardson, did you notice any discrepancy between the amount of dividends paid and the earnings of the company?
A. No, sir; there is no comparison on the sheet at all.
Q. Did you make any comparison?
A. I did in my statement.
Q. Between the earnings and the dividends paid?
A. Yes, sir.
1406 Q. Will you please examine that statement and see what the difference between the cash dividends and the earnings in 1896 were?
A. The earnings were $655,811.15 in 1896; the cash dividends were $429,160.50.
Q. Mr. Stagg, over the whole course of time over which your examination of the books extended how much were the cash earnings of the company, if you are able to tell?
A. I could not tell the total; I did not make any figures.
Q. Haven't you totaled that up at all?
A. No, sir.
Q. Haven't you figured up the total amount of di-dends which the company has paid?
A. Only from 1886 to 1896.
Q. What is the total?
A. $3,881,380.
Q. What were the net earnings from 1884 to 1896?
A. $5,601,250.88.
Q. In your judgment, as an expert accountant, what would the difference between those figures represent?
A. Surplus.
Q. Then, according to that, the company ought to have something over sixteen hundred thousand dollars of surplus on hand?
A. If it has not been applied for any purpose it would have.

Q. If it has been applied for any purpose, in your judgment a an expert accountant, into what account should it go?

A. Capital stock.

Q. Would that be a payment on capital stock the same as cash

A. Yes.

Q. Then, Mr. Stagg, why did you testify that only $817,400 o stock has been paid for in cash?

A. That was new money from the stockholders; the net earning I did not classify as a cash payment at all.

Q. And you want the court to understand that the new money paid by the stockholders is $817,400?

A. Yes, sir.

Q. What other money has been paid on account of capital stock

A. By the stockholders?

Q. By anybody.

A. None.

Q. Capital stock has been credited with earnings, has it?

A. Yes, sir.

Q. How much credit from earnings has it received?

A. $1,562,483 since 1884.

Q. Capital stock has received in cash the total aggregate of these two sums—$817,400 and $1,562,483. Is that true?

A. Yes, sir.

By Judge MARTIN:

Q. That is since 1884?

1407 A. Yes, sir. The larger item is all since 1884.

Q. Now, of this sum of $5,601,250.88, of the earnings of the company since 1884, do you know how much of that has been used by the company in the purchase of land?

A. I don't know anything about it.

Q. Now, if the company has applied any of that in the purchase of land to what account should that money be charged?

A. I don't know as I understand exactly what you mean.

Q. That is one thing about books that you don't know?

A. There are two ways of charging it.

Q. To what general account would it go?

A. I don't know even that.

Q. Is it not a fact that it would be charged to capital stock account?

A. I think not. Capital stock is usually made up from moneys received and not from moneys paid out.

Q. Is it not made up from land received?

A. Sometimes; perhaps it was in this case.

Q. How much of the capital stock seems to be accounted for by land?

A. The only item I have any knowledge of is $1,058,067.

Q. You don't know whether that was an actual purchase of land or not?

A. The entry shows it was an estimated increase in the valuation of the land.

Q. That is all you know about it?
A. That is all I know about it.
Q. Do you know of any land purchased the value of which has gone to the credit of capital stock?
A. That is the only item, I believe.
Q. Where did you get that entry?
A. From the ledger account of capital stock.
Q. Was that explanation written on the entry?
A. Yes, sir.
Q. Wasn't that in the journal?
A. I am not sure whether I got it from the ledger or from the journal.
Q. You examined the journal, did you?
A. For these specific items; yes.
Q. Did you go back and examine the journal with reference to that $1,667,100 item?
A. No, sir.
Q. Why?
A. Haven't had any opportunity.
Q. Mr. Stagg, you do not desire your testimony to be understood by the court as being your deliberate judgment of the facts
1408 with reference to the stock yards company, do you?
A. I am simply stating exactly what the books of the company which I have examined show. As to the correctness of them I know nothing; as to the several items which go into them I know nothing whatever.
Q. Then, you don't know whether the information that is contained in these accounts in the manner in which you have presented it is correct or not?
A. If the books are correct it is correct.
Q. You mean if this part of the account was correct?
A. Yes, sir.
Q. Now, if there are other accounts showing items of expense charged against the profits it would materially change your views on the subject, would it not?
A. Whatever increases the debit side of profit and loss account would diminish the profits.
Q. You testified about the number of head of cattle, hogs, sheep, and calves that the books showed were received by the stock yards company in 1896, and you also testified about a discrepancy of $31,000. Did you make any effort to discover how that discrepancy could be accounted for?
A. Simply my conversation with Mr. Richardson was all.
Q. Who assisted in making these examinations of the books of the company?
A. Mr. Riggs.
Q. Did you submit these reports of yours to Mr. Riggs?
A. Yes, sir.
Q. Do they meet his approval?
A. I suppose so.
Q. Mr. Stagg, am I right in assuming that all the information

you have conveyed to the court by your testimony would be conveyed by a copy of the profit and loss account of the company and a copy of the income accounts?

A. Those are the sources of my information.

Q. Well, have you conveyed any information to the court except that?

A. I think not, except putting it in tabular form.

Q. You have arranged the figures a little differently?

A. They are the same figures exactly.

Q. But a little different arrangement?

A. I think not.

Q. You do not mean to say that there is any account in these books arranged like this?

A. Not exactly.

Q. You testified about a donation of $40,000 to Fowler Brothers. Q. How do you know that was a donation?

A. Mr. Richardson told me so.

1409 Q. That is all you know about it?

A. Yes, sir.

Q. You testified about a matter of $995,000 charged to construction account. What do you mean by that?

A. That is simply the entry that appears on the books.

Q. What books?

A. Ledger B, page 336; the entry is construction account to capital stock; capital stock is credited and construction account debited.

Q. So you infer there was an increase of the capital stock?

A. It shows very plainly it was an increase.

Q. Did you know the condition of that construction account at that time?

A. I don't know a thing about it.

Q. Then you don't know whether that $995,000 was actually paid through construction account or not, do you?

A. I don't know anything about it.

Q. You have testified about a donation of $500,000 to Armour. How do you know that was a donation?

A. Mr. Richardson told me so.

Q. That is the only way you know it?

A. Yes, sir.

Q. You have testified about $1,057,067 increase of capital stock as the estimated increased valuation of land; do you know what land that refers to?

A. No, sir.

Q. You don't know whether that is land the company owns now or that it sold and got the money for, or anything about it?

A. No, sir.

Q. You are not offering, then, to make any explanation about these entries, are you, Mr. Stagg?

A. I simply state what I find.

Q. Now, you have testified that the amount of expenses incurred

by the company in operating in 1896 was $368,059.05. What do you mean by that, Mr. Stagg?

A. That is as it appears in the profit and loss account.

Q. That is the only place you looked for it?

A. Yes, sir.

Q. There might be a good many other expense charges, might there not, in the books?

A. I don't suppose the company has overlooked anything of the kind.

Q. You think they would put them in their profit and loss account, do you?

A. I should think so.

Q. Did you ever examine the books of a stock yards company before?

1410 A. No, sir.

Q. Don't know anything about the kind of accounts they keep?

A. No, sir.

Q. And yet you think they would keep it all in one account?

A. I think they are competent book-keepers down there; I think they understand the business pretty well.

Q. You testified to the amount that the company would make under the rates fixed by the legislature of the State of Kansas, did you not—the percentages of earnings?

A. Yes, sir.

Q. How did you get at that?

A. I applied the rate as I received it to the number of head of stock handled and made the computation in that way.

Q. Who asked you to do that?

A. I don't know.

Q. Some of the counsel for the defense?

A. I don't know; perhaps so.

Q. In doing that you took as the basis of your computation the expenses as you found them in the profit and loss account of the company?

A. Yes, sir.

Q. For the previous year?

A. Yes, sir.

Q. You did not make any inquiry of any one to ascertain whether there were any other expense items, did you?

A. Yes; I did at the time I took the profit and loss account off; I made inquiry of Mr. Richardson.

Q. What did he tell you?

A. He called it off and I wrote it down. I asked him if that was the closing up of the business for the year and he told me it was; that every amount properly chargeable to profit and loss was charged in there.

Q. And from that information you made your deductions?

A. Yes, sir.

And in answer to redirect interrogatories propounded to him by Judge Martin, counsel for the defendant L. C. Boyle, attorney general, the witness testified as follows, to wit:

Q. Mr. Stagg, when it is desired to close up a set of books at any particular time in order to ascertain how the business stands, referring, of course, to beeks kept on the double-entry plan, how are the accounts closed usually?

1411 A. The various accounts which show receipts are placed to the credit side of profit and loss account and thise which show expenses to the debit side.

Q. What would the difference be?

A. It would be profits or losses. If the credit side were the larger it would show profits; if the debit side were the larger it would show losses.

Q. The different accounts are closed into profit and loss?

A. Yes, sir.

Q. Usually, into what would profit and loss be closed?

A. It can be paid out as cash dividends or kept in the business, just as preferred.

Q. What does income account show?

A. The income account is the account to which the balance from profit and loss is transferred, as it was transferred in this instance.

Q. Do you transfer from profit and loss into income?

A. Yes, sir; that was done here.

Q. And the income account includes what besides the balances of profit and loss?

A. There is nothing on the credit side excepting the entries of balance, etc.

Q. Are the dividends put into that?

A. On the debit side; yes.

Q. What is the difference between the two sides of that account?

A. Surplus.

Q. I believe you stated in your cross-examination that you didn't know whether the $995,000 of increase of capital stock that was charged to construction account in 1884 was cash received or not; will you state just how that transaction is recorded?

A. The closing paragraph of the entry says, Two shares of new stock for one share of old; the capital stock was doubled at that time.

Q. Is there any indication that any cash was received in payment of the stock?

A. None that I could discover.

And in answer to recross-interrogatories propounded to him by D. R. Hite, Esq., counsel for the complainants, the witness testified as follows, to wit:

Q. What do you say a concern puts into profit and loss when it closes up its books at a definite time?

A. It is owing to circumstances; it — owing to what kind of a business it is.

1412 Q. If it is a merchandising business they usually take an inventory, don't they?

A. Yes; the inventory is carried to the credit side of merchandise account and the difference is carried to profit and loss.

Q. Did you ever know of a merchant closing up his books at any time without taking an inventory?

A. No, sir.

Q. Did you find any inventory in this profit and loss account?

A. I didn't look for any.

Q. You don't know whether it was there or not?

A. I didn't see it; I didn't have access to the books; it was not in the accounts that I saw.

Q. Don't you know that there must be an entry with the inventory in it?

A. I don't know how they keep their books here.

Q. Don't you know that from your knowledge of keeping books?

A. As I understand it, the proposition is simply that they are closing up the business for the year; to find out what the business has earned them for that year I do not think it necessary to take an inventory of the lands and buildings.

Q. Suppose they had lost a half a million of dollars of property in the course of the year?

A. That would be shown in some other way—in their statement of assets and liabilities.

Q. Did you find anything of that kind?

A. No, sir.

Q. Did you look for it?

A. No, sir.

Q. Did you ever make a statement of the resources of a company without an inventory?

A. Yes, sir.

Q. When?

A. It is always done in banks.

Q. Don't they put in their office furniture and fixtures?

A. No; not at that time; they put it in at what it cost.

Q. Did you find any money in this profit and loss account?

A. I didn't discover any.

Q. Doesn't the bank put in its bills receivable?

A. Yes, sir.

Q. You say that you have closed up the books of a company and shown the condition of the business without an inventory?

A. It can be done.

Q. Name an instance where you have seen it done.

A. In merchandizing, of course, an inventory is always taken.

Q. Isn't it done in every business?

1413 A. Not in the sense you put it; they don't take an inventory in a bank except to count the currency.

Q. They put in the office furniture and fixtures?

A. They are carried as an account in the ledger; the amount does not change.

Q. Don't they put in a list of all the valuable property they have on hand?

A. Yes, sir.

Q. It is an inventory of their kind of business?

A. Yes.

Q. It goes into the profit and loss account by which they close their books?

A. Yes, sir.

Q. You didn't find anything of that kind in these books?

A. No, sir.

Q. Didn't that strike you as a little strange?

A. No, sir.

Q. Didn't make any inquiry about it?

A. I simply took a copy of the books as they were given to me. In order to get a book I always had to make application for a specific book—the specific account and specific page. The books were never handed out to us at all.

Q. I understand that you did work at some disadvantage; but now don't you want to correct the answer which you made to Judge Martin's question with reference to the closing of a set of books?

A. Oh, I guess that will do the way it is.

Q. Then, as I understand you, you are willing to say as an expert accountant that a set of books can be closed up and the profit, if any, of the year determined without taking an inventory?

A. I said in a mercantile business it could not be done; I said in a bank where an inventory was carried continually on the face of the books that it was not necessary to make a specific inventory.

Q. How about hay, corn, horses and wagons, and things of that kind, oughtn't they be in there?

A. I suppose they have got them in.

Q. Are they in the profit and loss?

A. I haven't got the detail of the profit and loss; it gives the item hay, but it doesn't say how much they bought or whether they paid anything for it.

Q. Do you think you could ascertain the profit of the company for any year without going through the account thoroughly?

A. I am not stating this as the profit of the company; I am stating it as the profit of the company as shown by its own books.

Q. As an expert accountant, is it not a fact that this account does show a profit, according to your best judgment? 1414–1435

A. I think it does; I think that is what the company made it for; it is so designated on the face of the books.

Q. Please state again, Mr. Stagg, what ought to be done by a corporation of the character of the Kansas City Stock Yards Company when they want to close up their books and find how much money they have made in a certain year. Suppose they are going to quit business?

A. They would take an inventory of all the property they had, of course, in order to find out the value of the capital stock.

Q. Could they get at their profit for the year just closing unless they did that?
A. On the current business they could.
Q. Without reference to whether they had lost all their property or kept it?
A. That is it, sir.

Witness excused.

1436 CHARLES F. MORSE, a witness heretofore sworn in the cause, being recalled on behalf of the defendant L. C. Boyle, as attorney general of the State of Kansas, in answer to direct interrogatories propounded to him by Mr. Boyle, testified as follows, to wit:

Q. Do you know what this bank stock is worth on the market?
A. Of the Interstate national bank?
Q. Yes.
A. The last information I have about it—I asked the president of the bank about it a few days ago, and he told me that there had been quotations of 110 within a short time; for the last four or five years it has been about par.
Q. Referring to the 49-acre piece of ground that finally went into the possession and control of the State Line Improvement Company, that has been referred to in the evidence several times, were you familiar with that tract of ground in 1884, Colonel Morse?

Mr. Hite objects to the question as incompetent, irrelevant, and immaterial. Objection overruled.

A. Yes, sir; I was familiar with it.
Q. How long had you known that piece of ground?
A. From 1879.
Q. What was it used for during that period of time from 1879 to 1884?
A. I think it was principally used for lumber yards; there were a number of them at that time on the grounds.
Q. You transferred that property some time in December, 1883, to what is known as the State Line Improvement Company?
A. I should think it was about that time; I haven't a memorandum of the date now.

By Mr. HITE: All testimony in relation to lands owned by the State Line Improvement Company goes in under our objection?
By the MASTER: Yes.

Q. What was that land worth at the time you transferred it to the State Line Improvement Company, in your best judgment?
A. I think, about five thousand dollars an acre.
Q. Who constituted the State Line Improvement Company?
1437 Q. Who were the members or stockholders in that company?

Mr. Hite objects to the question as incompetent, irrelevant, and immaterial. Objection overruled.

A. I think I can make that clearer by making a short explanation of the transaction, as it would be impossible for me to say exactly who the *the* parties are and were by naming all of them. At the date given, in 1883, at the time it was proposed to sell the stock yards to the newly organized company, it was the expectation that the change of plans which has been testified to here would be carried out at some time in the near future of transferring the entire plant over across the river, and this land had not been used for stock-yards purposes and apparently was not going to be used for stock-yards purposes, so that the old company, before disposing of its property to the new company, cut that land off from the property which it was to convey to the newly organized company; also that little corner of land in what was known as the Graham tract, which also lay outside of the stock-yards uses and possibilities. A company was organized, known as the State Line Improvement Company, to take charge of that property, but not to hold it in its name, because it was decided, I think, by the attorneys at that time that a land company could not be organized under the laws of Missouri, so that the property was conveyed to these three parties who have been named as joint tenants, and this company, but not corporation, was organized, for which these three gentlemen were trustees. The property was made the basis of shares which were issued to the stockholders in the stock yard company *pro rata*, so far as that was practicable. Those stockholders who were stockholders in the stock yard company at that time became the owners *pro rata* of the stock of the State Line Improvement Company, but there was never any other connection between the State Line Improvement Company and the stock yard company, that I know of, but just what existed at that time.

By the MASTER: I understand that each stockholder in the stock yard company received a proportionate share of the property?

A. Yes; it was practically what has been called a property dividend; it was a dividend of that property which was of no
1438 use for stock yards purposes, as it was then regarded, and there was apparently no necessity to hold it for such purposes, and the people who were in the old company and were the owners of the property took it out and made a new company, and those individuals got the stock in the new company.

By Mr. HITE:

Q. You mean the individual stockholders of the old company?

A. Of the old company. The stockholders of the Kansas City Stock Yard Company in December, 1883, received *pro rata* the stock of this State Line Improvement Company.

By the MASTER: And were in fact the stockholders of the unincorporated State Line Improvement Company?

A. Yes, sir.

Q. When you reorganized the old company into the new Kansas City Stock Yards Company, you understand, right at that moment, at that instant of time, the members or the stockholders of the new

company were also stockholders of the State Line Improvement Company; is not that true, Colonel?

A. That followed as a matter of course at that instant of time, but that condition did not continue.

Q. Of course there might have been some change among the stockholders afterwards, but when the new company bought out the old company they just simply issued two shares of stock in the new company to the members for one share of the stock in the old company.

Mr. Hite objects to the question as improper.

By the MASTER: The subject has been gone over very fully already.

Q. I will now ask you to explain the transfer to the State Line Improvement Company of that piece of land now owned by that company and formerly owned by the stock yard company, which lies south of Central avenue and east of Ewing street. How did the title to that property come into the State Line Improvement Company?

A. I don't know that I could answer as to how the title came into the improvement company, but the method by which it was conveyed was similar to what it was in the case of the 49-acre tract.

Q. This land was deeded directly from the stock yard company to the State Line Improvement Company. The transaction was the same in each case; it was to convey property which it was expected would be of no use to the stock yards company, and it was
1439 conveyed to the parties who were the stockholders in the old company.

Q. I now call your attention to the piece of ground which you bought for the street railway company—the triangular piece of ground on the corner of 12th and Genesee streets. What is that property worth at the present time?

A. It is a difficult lot to value, on account of its small frontage on 12th street. It is a lot that would be difficult to utilize. The property on 12th street, right along adjacent to it, is worth $250 per front foot, and some are higher than that. That frontage of 14 feet would be worth at that rate; but this fractional corner would be left, and the value of the lot would depend upon whether you could find any one who could utilize it in any way. It is not a very valuable lot, but I should say it ought to be worth six or seven thousand dollars.

Q. You bought that piece of ground for the purpose of accommodating the street railway company?

A. Yes, sir.

Q. You gained as much land from the city as you gave to the street car company, did you not?

A. Yes, sir.

Q. What was the value of the land that you gained from the city? Would it make up what the whole lot would be worth?

A. I think it would.

Q. What would you value the land — that you received from the city?

A. I think that lot, before the triangular piece was cut off, was worth fifteen to eighteen thousand dollars, and the two pieces now, put together, would be worth just about the same thing.

Questions by Judge MARTIN:

Q. When I questioned you about the different lots that you had purchased up north of the north yards in 1894 and 1895, I rather think I omitted to mention lots 81, 83, 85, and 87, and 93, 95, 97, and 99 on Armstrong street. Do you know the cost of them?

A. I could not tell without reference to the books. I should say about one hundred dollars a front foot.

Q. I think they cost $19,200?

A. I presume that it about right. The average cost in there was about $100 a foot.

1440 And in answer to cross-interrogatories propounded to him by Judge Horton, counsel for the complainants, the witness testified as follows, to wit:

Q. Please state about this land owned by the State Line Improvement Company. State whether or not, except as having purchased it, the Kansas City Stock Yards Company has ever had possession, control, or any interest in the property.

A. None whatever, except as the company has bought it.

Q. Has either the company or its stockholders ever made any claim to that property except as they have purchased it?

A. No, sir; they have not.

Q. At the time of this transfer in 1883, or declaration of trust, or whatever it was, state whether or not there was any understanding between the present stock yards company or any of its stockholders that they had any interest in that property.

A. I do not know of any.

Q. As to the Graham tract which was deeded directly by the Kansas City Stock Yard Company to the State Line Improvement Company, state whether or not the present corporation, the Kansas City Stock Yards Company, has any interest in or claim upon that property.

A. None whatever.

Q. Except by later purchase?

A. Except by later purchase.

Q Do they have any claim in it of any kind or character?

A. No, sir.

Q. Ever had possession of it?

A. No, sir.

Q. They asked you about some bank stock. What did you say was its present value?

A. The quotations that were named to me by the president of the bank was 110.

Q. One day when I was present there were some questions asked you upon cross examination as to the value of the stock of the pres-

ent stock yards company prior to the passage of this law by the Kansas legislature. *Q.* What was the value of that stock, say, on March 12, 1897, and during the year 1896?

Mr. Boyle objects to the question as not proper cross-examination. Objection overruled.

A. The sales of stock during 1896 were from 134 to as high as 141; they varied a little month by month.

Q. What would you say was the average market value of the stock during that period?

A. Well, in January, 1896, the market value was from 140 to 141. In March of the same year it was from 139½ to 140½; April, 139½ to 141; June, 135 to 137; July, 134 to 137; November, 132 to 135; January, 1897—the last figures of which I have any knowledge—133 to 134. From then until March I have no quotations.

Q. Have you calculated what the average would be prior to March 12, 1897?

A. I think it would average somewhere about 136 to 137. I haven't made any exact figures, but the lowest mark was, for a short time, 132, about election time, but for the greater part of the time it was above 137.

Q. Do you know of the market value during each of the times you have testified about?

A. Yes. I know of sales along from time to time.

Questions by Mr. HITE:

Q. Colonel Morse, with reference to this State Line Improvement Company matter, in order that I may understand you clearly, is it not a fact that at the time or about the time of the contemplated transfer of the stock-yards system to the present corporation it was determined by the stockholders of the Kansas City Stock Yard Company to distribute among themselves all property which it was not intended to convey to the new corporation?

A. That was practically the plan, the property consisting of these lands which have been referred to.

Q. As I understood your testimony, it is a fact that this 49 acres that has been spoken of here and a part of the Graham tract that forms a triangle in the location you have mentioned was actually distributed among the stockholders of the Kansas City Stock Yard Company prior to the transfer of the Kansas City Stock Yards system to the present corporation?

A. That is as I understand it; yes, sir.

Q. And that distribution having been made, that property is not now and never has been held in trust by anybody for the benefit of the present corporation, has it?

A. No, sir.

Q. Nor any part of it?

A. No, sir.

1442 And in answer to further interrogatories propounded to him by Mr. Boyle the witness testified as follows, to wit:

Q. I neglected to ask you the value of this Central Avenue tract in 1884, the same as I asked you with reference to the other.

A. That is just the piece you mean, that was cut off for the State Line Improvement Company.

Q. North from the south line of the Graham tract to the south line of Central avenue, east of Ewing street, to State Line street; what do you say that was worth in 1884?

$25,000

A. I think that was worth $5,000 for the whole tract. Some of it had been bought not very long before.

Q. Do you know how much it costs to fill land per foot?

A. I know what it has cost approximately to grade over there on the land that we have filled up along the river.

Q. Which land do you refer to?

A. I know what that cost us by the yard in some parts.

Q. Which land is that?

A. I am speaking particularly where we did the largest job of filling in the quarantine yards; those were filled up seven or eight feet above the original grade.

Q. What did you fill it with?

A. We filled it mostly with material right out of the river; dredged it out and filled it up.

Q. Do you know what the main yards were originally filled with—that is, that portion which was formerly the bed of Turkey creek; do you know what it was filled with? The bed of Turkey creek which ran through the main yards originally when the stock yards were first mapped out?

A. Most of that was filled when I came to the yards, but a great deal that was done afterwards was done with material that we bought at different times from the city where they were grading streets and had it hauled at so much a yard; that was done along about 1886 and 1887; I know we bought material that came from the excavations of cellars, by the excavation of streets. Any contractor who would be doing a job of cutting here in the upper part of the city we would pay as much for the dirt as we thought we could afford to pay and have it delivered down there.

1443 Q. Do you know how much of that land was filled, how much of the bed of Turkey creek was filled, and how much filling was necessary in the main yards?

A. No; not the original part, because when I came there it was simply a depression; the main part had been filled. There was a hollow part of the yards; one part was occupied by a tunnel which went under some of the railway tracks. The surface had never been fully filled up, but it was filled up sufficiently to enable the company to use it.

Q. Do you know what it cost to make that filling in there?

A. Well, we have paid all the way from 25 to 40 cents, according to the distance the material was hauled; where we dredged from the river; we got it below that.

Q. I mean in these main yards?
A. I think it would average from 25 to 30 cents per cubic yard.

And in answer to further cross-interrogatories propounded to him by D. R. Hite, counsel for the complainants, the witness testified as follows, to wit:

Q. In the cost of the land on the books of the company, is this matter of filling stated as part of the cost of the land?

Objection, and no answer.

Q. What has been the cost to the company of filling that land in the manner you have stated?
A. I could not answer that without a careful examination of a great many accounts; I should have to pick the items out from a great many accounts.
Q. Has it cost a good deal of money?
A. It represents a very large item, the cost of grading land to its present level.
Q. Those expenditures were necessary to put the land in condition for use for stock-yards purposes, were they?
A. They were necessary in order to have the land available for stock-yards purposes; it was necessary to have the land graded.
Q. And the grading that you have been testifying about there in the west part of the yards has cost the company a great deal of money to bring it to grade, has it not, Colonel Morse?
1444 A. It represents a very large part of the cost.

Witness excused.

1445–1559 GEORGE T. WILLIAMS called on behalf of the defendant, L. C. Boyle, as attorney general of the State of Kansas.

Direct interrogatories by Mr. BOYLE:

Q. Mr. Williams, have you any interest in what is known as the State Line Improvement Company?
A. I have.
Q. Do you hold stock in the company?
A. Yes, sir.
Q. How many shares?
A. 25 shares.
Q. What was your portion, was it?
A. That was what I got. I don't know how it was created. It was my understanding it was my *pro rata* share.
Q. How many shares of stock did you hold in the Kansas City stock yards at that time?
A. I don't know.
Q. You understood the number of shares you got was the percentage you were entitled to in proportion to the amount of stock you owned in the stock yards company?
A. Yes, sir.
Q. Did you receive a portion of the benefits of the sales of land

in 1892 and 1894—the ten acres that were sold to the stock yards company?

A. I received some money, but I can't tell just what it was for.

Q. When did you receive that?

A. I don't remember, but it was some time ago—three or four years ago or something like that. I don't remember much about it. I simply took the stock and put it in the box, and haven't noticed or seen it since.

Q. Do you know how long the stock yards company had owned that land before it was distributed among the stockholders?

A. I do not.

Witness excused.

Adjourned subject to call by the master.

1560 By Judge MARTIN: The attorney general offers in evidence the sheet marked Exhibit 20 as showing the valuation placed upon the property of the Kansas City Stock Yards Company, therein described, by the assessing officers of Jackson county, Missouri, for purposes of taxation for the year 1896, and as showing the city taxes levied thereon and paid by the company for said year, the total valuation for such purposes being $415,270 and the total taxes paid thereon being $5,074.02.

By Mr. DANA: We admit that those figures are correct, but object to the introduction of the valuations in evidence for the reason that the same are irrelevant and immaterial and do not tend to prove any issue in the case or any matter in the order of reference in the case.

By the MASTER: It is not offered as showing the value of this property except the value as placed thereon by the assessors for taxation.

By Mr. HITE: That is all.

The master overruled the objection.

By Judge MARTIN: The attorney general offers in evidence the sheets marked Exhibit 21 as showing the value placed on the property of the Kansas City Stock Yards Company, therein described, by the assessing officers of Jackson county, Missouri, for the purposes of taxation for 1896, and the certificate of the collector, thereto attached, as showing the total amount of taxes, to wit, $5,100.65, paid on such valuation for State and county purposes by said company in 1896.

The attorney general also offers to prove that the same rate of taxation for State and county purposes applied to each of the tracts described in said sheets.

By Mr. DANA: We make the same objection to the offer of proof as to the rate of taxation and the same objection to the admission of the valuations, as before fully stated.

By the MASTER: You make the admission that the same rates apply?

By Mr. DANA: Yes; we admit that.

The master overruled the objection.

By Judge MARTIN: The attorney general offers to prove that the

valuation of the personal property of the Kansas City Stock Yards Company, located in Kansas City, Missouri, for purposes of
1561 city taxation for 1896 was $7,930, and that the city taxes paid thereon were $96.93; also that the valuation of personal property of said company, located in Jackson county, Missouri, for the purposes of State and county taxation for the same year was $59.50, and that the State and county taxes paid thereon by the company were $73.17.

By Mr. DANA: We objects to the admission of the valuations in evidence as irrelevant and immaterial and not tending to prove any issue in the case or anything referred to the master.

Objection overruled.

By Judge MARTIN: The attorney general offers to prove that the valuation for purposes of taxation, as fixed by the assessing officers of Wyandotte county, Kansas, upon the following property in that county for 1896 and the amount of taxes paid by the stock yards company thereon for said year were as follows:

Main yards, valuation, $118,100; taxes, $6,200.25.

North yards, valuation, 48,000; taxes, 2,520.

Land west of Water street and west of north yards, —, 1,000; taxes, 52.50.

Lots in block next north of north yards, being lots referred to as *e e e e e*, —, 15,035; taxes, 834.54.

Land west of Water street and west of lots marked *e e e e e*, valuation, $715; taxes, $39.39.

Quarantine yards, valuation, $18,500; taxes, $1,067.05.

Tract described as D, valuation, $4,750; taxes, $249.37.

Two small tracts in section 21, township 11, range 25, valuation, $565; taxes, $29.66.

Two large tracts in sections 17 and 20, township 11, range 25, valuation, $24,820; taxes, $1,067.26.

Personal property, valuation, $8,060; taxes, $423.15.

Mr. Dana objects to the admission of the documents in evidence as irrelevant and immaterial, not tending to prove any issue in the case or any matter in the order of reference. Objection overruled.

By Judge MARTIN: We offer in evidence four assessment lists, attached together, for personal property in Jackson county, Mo., therein described. These lists are certified to by the county collector, and each one of the originals is sworn to by Mr.
1562–1565 Richardson. The assessment is for 1896, made in 1895.

The complainants object to the admission of the lists in evidence as being incompetent, irrelevant and immaterial, and not tending to prove any matter in the order of reference, and for the reason that the papers are not authenticated, as required by law, and are not exemplified copies, as required by law.

The master sustained the objection.

Adjourned subject to call by the master.

1566 J. B. SPELLMAN, a witness produced by the defendant L. C. Boyle, attorney general, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to direct interrogatories propounded to him by Mr. Boyle, testified as follows, to wit:

Q. What is your business?
A. Hay commission merchant.
Q. How long have you been engaged in that business?
A. 20 years.
Q. Where?
A. On West 12th street most of the time, Kansas City, Mo.
Q. Are you familiar with the average price of hay, both timothy and prairie, during the year 1896?
A. Yes, sir.
Q. As a hay commission merchant, what do you do?
A. I receive hay on consignment, and sell to the retail trade, and do a jobbing business.
Q. As I understand it, you buy and sell hay?
A. Yes, sir; mostly on commission. Of course, when I do not get enough on consignment I go right on the market and buy.
Q. How much hay do you handle in a year?
A. About 75 cars a month.
Q. What kind of hay do you handle?
A. Some timothy, but mostly prairie.
Q. Do you keep posted on the market price of hay each day?
A. Yes, sir.
Q. You may state the average market price of the best prairie hay during the year 1896—the wholesale price.
A. It ran from $5.50 up to $6.50; the average would be $6.00 a ton for last year.
Q. What would be the retail price?
A. About a dollar advance.
Q. What do you mean by retail prices; on what kind of lots is that?
A. Wagon-loads and less than wagon-loads.
Q. What was the average market price of timothy hay for 1896?
A. About nine dollars per ton, wholesale.
Q. And retail?
A. About a dollar advance, or ten dollars per ton.
Q. Do you buy and sell corn?
A. Yes, sir.
Q. How long have you handled it?
A. 20 years.
Q. Is it necessary for you to keep posted on the daily market price of corn?
A. Very necessary.
1567 Q. You may state, if you know, the average market price of corn during the year 1896.
A. Yes; about 22 cents a bushel.
Q. Wholesale?

A. Yes, sir.
Q. And by retail?
A. On wagon-loads about 2 cents addition; less than wagon-loads, 5 cents advance.
Q. Do you handle oats in your business?
A. Yes, sir.
Q. Are you familiar with the average wholesale price of oats during the year 1896?
A. Yes, sir; oats and corn were very close together, about 23 cents a bushel for oats at wholesale, and at retail about the same advance as on corn.
Q. Do you deal in bran?
A. Yes, sir.
Q. Do you know the average wholesale price on bran during the year 1896?
A. Yes, sir. It has fluctu*ated* very much; it has ranged from 40 to 65 cents. Probably the average would be 55 cents per hundredweight.
Q. And the retail price?
A. About 5 cents advance on the wholesale price.

And in answer to cross-interrogatories propounded to him by D. R. Hite, counsel for the complainants, the witness testified as follows, to wit:

Q. Do you sell less than a bale of hay in your business?
A. No, sir.
Q. Ever sell less than a ton?
A. Yes.
Q. Is that your business, selling less than a ton?
A. No, sir.
Q. Are the prices you have given for hay delivered?
A. That is the contract price.
Q. How much is to be added per ton on hay and per bushel for corn delivered?
A. Fifty cents a ton for the delivery of hay within the city limits and a cent and a half for the delivery of corn per bushel, and a cent a bushel for oats.
Q. What is the least quantity of corn that you sell in your business?
A. We sell in wagon-loads. Of course, if a friend comes along and wants a smaller lot we sell it at an advance of five cents a bushel.
Q. Do you ever sell a quantity of one bushel?
A. No, sir.
Q. Have you ever done it?
A. I don't know but what I have done it, but it is not usual.
1568 Q. Do you know anybody in Kansas City who sells corn by the bushel?
A. Yes, sir.
Q. A bushel at a time?
A. Yes, sir.

Q. Is there any market price for such corn?
A. Each dealer puts on his own price; some have more profit than others. The average is about five cents a bushel; some put it up to ten cents a bushel.
Q. There is no market price on such lots?
A. No, sir; not at retail.
Q. Is the same true with reference to hay?
A. Yes, sir.
Q. There is no market price for hay in such quantities?
A. Not by the bale.
Q. There is no retail price for that?
A. Each man makes his own price.
Q. Is that true with reference to bran and oats?
A. Yes, sir.
Q. There is no retail price on them, no market price, in the quantities I have mentioned?
A. No, sir.
Q. You do not do business of that character at all, do you?
A. Very little; sometimes I do it to accom-odate a friend.
Q. That is a mere matter of accom-odation?
A. Yes, sir.
Q. Am I — understand from what you have said that in relation to hay in amounts less than 100 pounds, corn in the amount of a bushel or less, and oats in the amount of a bushel or less, and bran in the amount of a hundred pounds or less, that the prices of such commodities in such quantities and such weights is largely determined by the dealers themselves?
A. Yes, sir.
Q. And that if there is any retail market the prices are fixed by individual dealers; is that true?
A. That is true.
Q. And so far as you know that advance is from five to ten cents a bushel on corn and oats and per cwt. on bran and from a dollar to a dollar and a half a ton on hay?
A. Yes, sir; when delivered.
Q. The other prices you have stated here are the average wholesale prices for 1896?
A. Yes, sir.
Q. What is your standard of weights?
A. 32 pounds for a bushel of oats, 50 pounds per bushel of shelled corn, or 70 in the ear, and 2,000 pounds per ton of hay.

Witness excused.

1569 E. W. FISH, a witness produced by the defendant L. C. Boyle, as attorney general of the State of Kansas, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to direct interrogatories propounded to him by Mr. Boyle, testified as follows, to wit:

Q. What is your business?
A. Feed and coal business.

Q. What kind of feed do you handle?
A. Hay, corn, oats, bran, chop, wheat, etc.
Q. How long have you been engaged in that business?
A. About 19 years.
Q. Where?
A. 1418 Grand avenue most of the time.
Q. In Kansas City, Missouri?
A. Yes, sir.
Q. Do you buy and sell hay, corn, oats, and bran?
A. Yes, sir.
Q. Is it necessary for you to keep familiar with the daily market prices of those commodities?
A. Yes, sir.
Q. You may state if you are acquainted with the average market price of prairie hay during the year 1896.
A. Yes, sir.
Q. What was it?
A. It ran on an average of about $6 to $6.25 in 1896. It was as low as $5 50 and as high as $7.50.
Q. What was the retail price?
A. It ran about a dollar a ton over that, and we aim to get ten cents a hundred retail, and five cents a hundred in ton lots or wagon-load lots.
By Mr. HITE: You mean in addition to those prices?
A. Yes, sir; we always aim to get ten cents a hundred over the wholesale prices in small quantities at retail. We never make any difference on 100 pounds to 1,000 pounds; for instance, we pay $6.00—that is, 30 cents a hundred, and we retail it at forty cents per hundred.
Q. When you sell ton lots at retail on the market what do you aim to get in advance of the wholesale price?
A. Five cents per hundred, or a dollar a ton.
Q. Now, what do you mean by wholesale prices?
A. That is in car lots on the track—the railroad track.
Q. Hay is shipped in in car-load lots?
A. Yes, sir.
Q. And you buy it in car-load lots on the track?
A. Yes, sir.
1570 Q. And you buy it in car-load lots on the track?
A. Yes, sir.
Q. What does it cost to haul it from the cars to your warehouses?
A. Fifty cents a ton.
Q. What is done with that charge, put into the retail price?
A. Yes; for instance, I buy hay on the cars at six dollars a ton. I haul it to the warehouse and sell it at retail for eight dollars a ton.
Q. What was the average market price of timothy hay per ton during 1896?
A. My recollection is about $8.00 to $8.50.
Q. And the retail price?
A. From a dollar to two dollars advance over the wholesale price.

Q. Do you know what the average wholesale market price was on corn in 1896?

A. I didn't really post myself on that, but my recollection is from 21 to 25 cents. I don't hardly think we bought corn as low as 20 cents in 1896, but perhaps we did.

Q. What was the average retail market price?

A. About 5 to 7 cents advance over the wholesale price; we might say 7; we always aim to get 5 cents clear.

Q. In what quantities do you sell corn?

A. Any quantities.

Q. Do you do much business in small quantities?

A. Not much, but we do business in very small quantities; we would sell even a nickel's worth, if requested, but would not deliver such a small quantity as that.

Q. What was the average wholesale market price of oats on the track in 1896?

A. Oats and corn ranged very close together in 1896 is my recollection.

Q. What would be the average price in 1896?

A. I should judge from 23 to 25 cents; somewhere in there.

Q. And the advance over that in the retail trade would be about 5 cents?

A. Yes; from 30 to 32½; along there.

And in answer to cross-interrogatories propounded to him by D. R. Hite, counsel for the complainants, the witness testified as follows, to wit:

Q. What was the average price of corn in 1894?

A. I believe that was the cheap year. I ain't sure. I don't believe I can answer the question.

1571 Q. Do you know what it was in 1895?

A. Yes; it was a little higher than it was in 1896.

Q. How great have been the fluctuations in corn, within your recollection, in the wholesale market price? What was the highest price you remember for corn in the last five years?

A. I think about 55 cents. I think that has been within 5 years. I have seen corn as high as 90 cents since I have been in the feed business.

Q. It fluctuates pretty violently from year to year?

A. It has heretofore, but in the last three or four years it has not fluctuated very much.

Q. There is no reason why it should not fluctuate in the future just as in the past. If there should be a short crop it would fluctuate just the same?

A. Yes, sir. It depends altogether upon the crop.

Q. There is nothing in your experience that would warrant a man in saying it would not fluctuate as violently in the future?

A. No, sir.

Q. Do you ever deliver fractional parts of a bale of hay?

A. No, sir. We have quit selling less than a bale.

Q. You will not deliver a fractional part of a bale?

A. No, sir.
Q. Will you deliver fractional parts of a bushel of corn?
A. No, sir; not singly. We would if we had something else to go along with it.
Q. Why wouldn't you do that?
A. It would not pay me to send my wagon out with it.
Q. How much of an advan-e would you have to have to warrant you in delivering such small lots?
A. It would depend on the distance a good deal.
Q. You would have to have a considerable advance, wouldn't you?
A. Yes.
Q. You couldn't afford to deliver feed in fractional parts of a bushel or bale for the prices you have named here?
A. No, sir.
By Mr. BOYLE: As I understand you, you couldn't afford to take a bushel to John Smith, who lived half a mile away?
A. No, sir.
Q. For the price you have designated?
A. No, sir. We always refuse to do it, especially if he is a new customer. If he is an old and good one, we might accommodate him if we wanted to hold his trade.
Q. But if you had 600 or 700 or 1,000 customers all living
1572 in the same neighborhood, I will ask you if you could afford to deliver a bushel to each one of those customers on the same day.
A. Yes, sir; I could do that if they would pay me cash.

Witness excused.

B. F. TYLER, a witness produced by Mr. Boyle, defendant, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to direct interrogatories propounded to him by Mr. Boyle, attorney general, testified as follows, to wit:

Q. State your name and business.
A. B. F. Tyler; grain and hay merchant; receiving and shipping hay.
Q. In car-load lots?
A. Yes, sir.
Q. Where?
A. Kansas City, Missouri, most of the time.
Q. How many car-loads of hay do you handle a month?
A. About 75. It sometimes runs up to 100; about 75 on an average.
Q. What kind of hay do you handle?
A. All kinds.
Q. Do you handle any prairie hay?
A. Mostly prairie hay.
Q. Are you familiar with the average wholesale market price for prairie hay during the year 1896?
A. Yes, sir.

Q. State what it was.

A. Choice prairie hay sold for $5.50 to $7, which would make the average about $6 per ton.

Q. Do you know what the retail price was on the market during 1896?

A. Yes, sir; it was about a dollar advance per ton over the wholesale price.

Q. What do you mean by that dollar advance?

A. I am a receiver; I would sell it to a jobber and he would sell it for a dollar a ton over my price.

Q. What do you mean by a jobber?

A. One who sells to the trade.

Q. Do you know what the average market wholesale price of timothy hay was during 1896?

A. Yes, sir.

1573 Q. What was it?

A. About nine dollars. Clover and timothy mixed sold for about six or eight dollars a ton.

Q. What would the jobbers' price be?

A. About nine dollars.

Q. Do you handle corn?

A. Yes; in car-loads.

Q. What was the average wholesale market price of corn in 1896?

A. From 18 to 24 cents a bushel, I believe.

Q. At what advance would it sell on the retail market?

A. From one cent to two cents a bushel, depending on the quantity.

By Mr. DANA: You do not retail corn?

A. No, sir.

Q. Do you job?

A. No, sir.

By Mr. BOYLE: Do you handle oats?

A. In wholesale lots; yes, sir.

Q. What was the average market price of oats during 1896?

A. 20 to 25 cents per bushel. That was the best oats.

By Mr. HITE: You do not mean that those prices include delivery?

A. No.

Q. Those are prices on the track?

A. Yes, sir.

Q. You are not a retailer?

A. No, sir.

Q. You are not a jobber?

A. No, sir.

Q. You are not a retailer?

A. No, sir.

Q. You are a commissionman?

A. Yes, sir.

Q. Buy hay in large quantities?

A. Yes, sir.

Witness excused.

1574 W. S. TOUGH, a witness produced by the defendant L. C. Boyle, in answer to direct interrogatories propounded to him by Mr. Boyle, testified as follows, to wit:

Q. What is your business?
A. I am engaged, in company with my son, in managing the horse and mule department of the Kansas City Stock Yards Company.
Q. How long have you been engaged in that business?
A. I think I commenced with them in 1885; somewhere about that.
Q. Have you and your son the exclusive charge and control of the horse and mule market, Captain?
A. Subject to the stock yards company—their general manager.
Q. What is the business arrangement between you and the stock yards company?
A. They are the proprietors, of course, and furnish everything, and in lieu of salary they give me a percentage of the profits.
Q. You mean of the gross or net profits?
A. Net profits.
Q. What percentage?
A. Fifty per cent.
Q. They buy everything?
A. Yes, sir.
Q. And what is left is divided up?
A. Yes, sir.
Q. How long have you had that arrangement with the company?
A. Since the first of June, I think, 1885.
Q. Are you under any contract with them, Captain?
A. I am.
Q. What is the nature of your contract?
A. Just as I have stated it.
Q. For how long a period of time does it run?
A. I think it lasts two or three years; I will not be certain.
Q. Who buys the hay that is bought and used in the barn?
A. The company.
Q. They have a purchasing agent, Mr. Buffington?
A. Yes, sir.
Q. Does he buy all the grain, hay, bran, and other feed that is used by the horse and mule market?
A. Yes, sir; through his agents; not personally, I suppose.
Q. Do you know how he buys the grain and hay?
A. No, sir.

1575 Q. You may state, if you know, whether the hay, corn, oats, and other commodities are bought on the market for your barns.
A. They are purchased, I suppose, on the market. I don't know.
Q. Are there any other horse and mule markets in the city?
A. There is quite a number of dealers in horses and mules in the city.

Q. I mean barns such as you have down there?

A. There is none in the United States such as those.

Q. Are there any barns in the city where horses and mules are bought and sold?

A. Yes, sir; quite a number.

Q. What constitutes the business that you run down there, Captain?

A. Receiving, feeding, and selling on commission.

Q. Are there no other barns in Kansas City that do that kind of business?

A. Quite a number.

Q. What did you mean when you said there were no such barns as yours in the United States?

A. I don't think there is as complete a plant in the United States.

Q. You do not mean that there are no other barns that do the same kind of a business?

A. I say there is quite a number that do.

Q. You say you feed?

A. Yes, sir.

Q. What do you charge? What are your prices down there for the different services that you perform for horses and mules?

A. We charge for feeding mules in pens 25 cents per head.

Q. What do you feed them?

A. Everything they will eat—oats, bran, corn, meal, if it is necessary or requisite, corn meal if asked for, and the very best timothy and clover hay and green clover in season.

Q. How often do you feed them?

A. We keep their troughs full at all times.

Q. During the day?

A. We keep their troughs full both night and day.

Q. What other service do you perform for that mule for 25 cents?

A. We bring them out to customers—catch them and hold them and show them, harness them, work them, if necessary, as the customers may elect.

Q. Is that 25 cents per day?

A. Per day.

Q. You say in pens. What is a mule pen?

A. Take this room for example: There are sundry offices in the front, and a space is left for traders to congregate and for
1576 showing mules; then there is an alleyway extending through the length of the building 12 or 13 feet in width, and opening out into that alleyway are the animal pens. These pens are sewered and supplied with water. In showing the mules they are let out into this alley. Of course, we have to have our hands ready for the purpose of showing, as the term is—eyeing and mouthing—seeing that they have sound eyes and that their mouths are correct. We have to have a couple of able bodied men there to catch them and exhibit them, then the handling of them back to the pens and for loading and unloading; that is comprehended under the charge of 25 cents.

Q. These pens, then, are in a building?

A. Yes, sir; the building is divided into pens.
Q. Are those frame or brick buildings?
A. Brick.
Q. What do you charge per head if a mule is sold?
A. We now make no charge at all. That is in the hands of the commissionmen. We only get the feed. When we were selling horses and controlling the entire commission business we made no charge where the owner sold their own mules.
Q. Do I now understand that you do not receive any commission for selling mules?
A. We do not.
Q. The only receipts you get from handling mules is this 25 cents a day?
A. Yes, sir.
Q. Do you groom those mules?
A. Occasionally a mule comes in very muddy and unsightly, and the boys catch him, clean him off, and turn him back into the pen. We keep the pens well bedded with straw.
Q. What do you pay your stablemen per month?
A. From forty to fifty dollars a month. They are experts.
Q. Does it require any special talent for that work?
A. Quite a little. Like any other business, familiarity with it makes men more proficient and they render better service and are more desirable.
Q. Now, what are your charges for horses?
A. Fifty cents a day in the stalls and forty cents in the pens.
Q. What is the difference between a stall and a pen?
A. A stall is about nine feet long and about 48 inches from post to post. The horse is tied up, groomed, washed, cleansed, harnessed, and exercised.
1577 Q. Why do you charge more for a horse than a mule?
A. As I said, he has to be groomed regularly every morning, washed, cleaned, driven, and exercised.
Q. That is done, whether he is in a stall or a pen?
A. That is done when he is in a stall.
Q. What is the forty-cent charge for when he is in a pen; what do you do more for a horse in a pen than for a mule in a pen?
A. No more.
Q. Why is the difference in the charge?
A. Because we figure he eats double the amount.
Q. When he is in a stall you groom him, exercise him, and care for him just as if he was a regular boarding horse there?
A. Yes, sir.
Q. Do you get any commission for selling horses?
A. Not now; the commission firms located there do that.
Q. Are they identified in any way with your business?
A. Not at all; only as commissionmen.
Q. Do you receive any remuneration from them as commissionmen for selling horses or mules?
A. Yes; twenty-five cents per head for each animal they handle.
Q. What do you — for that 25 cents?

A. That is a very indefinite question to handle. We pick these men up and set them in an established, profitable business, and give them the benefit of our advertising that we do in connection with our general feeding.

Q. No other commissionmen can come in there save those that are there?

A. Yes; if they want to come there and apply. We have three firms now. If other firms will come we will give them space, and will be glad to have them.

Q. But no matter how many would come they would have to give you 25 cents a head for all they handled?

A. Well, I wouldn't say that that is absolutely to be the law; it would depend upon the circumstances.

Q. You might change the practice?

A. Yes, sir.

Q. I do not quite understand what you do for the 25 cents. I wish you would explain that, Captain.

A. We give them all the assistance we can and benefit of our general advertising.

Q. Captain, I wish you would tell the special master what
1578 business is conducted in the yards from 16th street south as far as the stock-yards property extends, and from old Bell street east as far as Genesee street.

A. General horse and mule feeding business.

Q. What else is conducted in that tract?

A. By us?

Q. No; by anybody.

A. These commissionmen for the sale of horses and mules are there.

Q. Are there any saloons or restaurants along there in that territory that I have described?

A. I think there is one or two eating-houses on Bell street.

Q. None on Genesee street?

A. I don't remember of any.

Q. Are there any cattle, sheep, hogs, or calves handled in the territory I have described?

A. Special sales of fine pedigreed stock or high-grade milk stock take place there.

Q. What do you mean by special sales?

A. That is where stock is sold by auction; special sales of pedigreed stock—fine cattle and hogs. We have never made a sheep sale that I know of.

Q. How frequently does that occur?

A. That would be almost impossible for me to state. We have made two or three a year, or four, maybe.

Q. Is there any feeding or handling of stock other than you have just designated on the portion of the yards I have just described?

A. None, unless it would be these cattle and hogs when they come there.

Q. Are there any pens for cattle, sheep, hogs, or calves in that portion of the yards I have described?

A. There are pens that we use for any purpose we choose. If a herd of dairy cows should come in to be sold or otherwise, or any other breeds, we would use the pens for them just the same as for any other purpose. All of our department is under roof; none of it is exposed at all.

Q. They would go into the horse and mule department, would they, Captain?

A. Yes, sir.

Q. Other than that is there any business so far as cattle, hogs, sheep, and calves are concerned?

A. None that I know of.

Q. Do you keep a set of books down there in your department, Captain?

A. The secretary and treasurer has a branch office just in the building.

1579 Q. The secretary and treasurer of the stock yards company?

A. Yes, sir.

Q. Do you keep an account of all the feed that you consume in your department?

A. Not in our department; I think that is kept at the general office of the company.

Q. Well, that must be kept in a dist-net account, I should think?

A. Of course.

Q. Do you allow these horses and mules to drink all the water they want for this 25 cents?

A. Yes, sir.

Q. And feed them all the hay they can stand?

A. Yes, sir.

And in answer to cross-interrogatories propounded to him by D. R. Hite, counsel for the complainants, the witness testified as follows, to wit:

Q. How long have you been in the business of handling and selling horses and mules?

A. Since 1866.

Q. How long, if you know, has this horse and mule barn been built down there?

A. You mean the present structure?

Q. Yes.

A. That is something I cannot answer definitely.

Q. It was there when you came?

A. I am speaking of the present building that I occupy.

Q. That is just what I am talking about. How long has that been built?

A. That is what I cannot say exactly.

Q. Has it been built since you came?

A. Yes, sir.

Q. About how long?

A. I think about six years.

Q. How did it come to be built, do you know, Captain?

A. The demands of business and the want of room.

Q. Had the business been established at that time?

A. Not to the extent that it has since.

Q. Now, what was the reason that you built a structure like that down there; why was it built?

A. I can't say.

Q. Was it for the purpose of inducing a market here?

A. Of course, to meet every requirement that the market demanded—to accom-odate the business.

Q. Has the business grown since the building was erected?

1580 A. Very largely; yes, sir.

Q. Do you attribute any of the success of the horse and mule market to the kind of a structure you have built?

A. Most certainly; it has advertised the market throughout the entire country, everywhere.

Q. And increased the volume of business?

A. Yes, sir.

Q. Now, when was it that you commenced this arrangement with the commissionmen, Captain?

A. On the first of January of this year.

Q. It has only existed, then, for a few months?

A. Yes, sir.

Q. Is it in the nature of an experiment?

A. Yes, sir.

Q. What had been your practice theretofore?

A. Do you mean in regard to the charges or the manner in which we handled the stock? When horses were shipped into us we charged them, when they were ordered sold, so much for feed and so much commission.

Q. How much would the shipper of a horse or mule have to pay to the company from the time the animal arrived up to and including the time of the sale? Just tell the master the average sum in dollars.

A. The average was about two days. On mules, as I said before, we made no charge where the owner sold his own stock, but where the owner sent it to us and we sold it we charged a dollar a head as commission.

Q. That was for mules?

A. Yes, sir.

Q. How much would you then get in the aggregate on a mule, in dollars and cents, for the whole transaction?

A. Probably $1.25.

Q. That was for that day?

A. Where we sold the mules in one day the charge was forty cents for the first day; the reason for that was that the animal usually got here at night on the cars and came into the barn with a ravenous appetite, and by closing him out on the same day we charged forty cents.

Q. I wish you would take the case which I am now going to sug-

gest. Suppose a horse should arrive at your barn on the morning of Monday at ten o'clock, and that by ten o'clock Tuesday that horse would be sold. What would be the amount of money that the owner of that horse would pay to the stock yards company for all the services that it rendered in and about the handling of that horse?

A. At fifty cents a day that would be two days' feed, which
1581 would be a dollar, and two dollars commission for selling, which would make three dollars altogether.

Q. Now, in reference to the transaction that you would have if a mule should be brought in there, say, at ten o'clock Monday morning, and would be sold by ten o'clock Tuesday morning, what, in your judgment, to the best of your recollection, would be the amount of money that would be paid by the owner of that mule to the stock yards company for the services rendered?

A. About $1.75.

Q. The prices which you have just mentioned were in effect in 1896, were they?

A. Yes, sir.

Q. For the full year?

A. Yes, sir.

Q. All the profits which were made from the horse and mule market were made upon those prices, were they?

A. Yes, sir.

Q. Will you state, as nearly as you can from memory, what the extent of the variations have been in the profits of the horse and mule department for the last six or eight years; have they varied?

A. They have increased.

Q. Were they larger in 1896 than in the previous year?

A. I think so.

Q. Is it your opinion that they have increased steadily in a sort of increasing ratio in the last six or eight years?

A. That would be my idea.

Q. Then there have been some years when the profits were considerably less than they were in 1896?

A. Yes, sir.

Q. Can you remember the lowest amount of profit that you can remember to have received out of the horse and mule market for any one year in the last eight or ten years?

A. I think the lowest was the first two years we took it.

Q. Do you remember how low that was, Captain?

A. I could not give you an accurate idea.

Q. During all the time that the profits have varied, the charges were enforced, were they, up to January, 1897?

A. No; we charged 35 cents for mules and two dollars a head the year when we first took hold of the business; those were the charges established by the yards.

Q. So that the charges in 1896 were less than they were at one time?

A. Yes, sir.

Q. Does your son share in the profits?
A. Yes, sir; he shares equally with me in the profits.

1582 By Mr. BOYLE:

Q. Is there any competition in your business, Captain Tough?
A. I think not, sir.
Q. There is nobody else here handling stock on commission?
A. Quite a number.
Q. They do not handle very much?
A. Insignificant amounts.
Q. You are familiar with the Sparks and Cunningham stables?
A. Yes, sir.
Q. They do not handle very many?
A. Not on commission; they are dealers.
Q. They do not handle very many horses and mules?
A. They handle a great number, sir, but not on commission, or a very small percentage on commission. It is an actual purchase by themselves.
Q. Then they sell out again?
A. Yes, sir.
Q. What do they do with the manure that comes from the barns?
—. A great deal of it during the winter and fall and spring is taken away by the gardeners around there.
Q. Do you get anything for it?
A. No, sir; we are very glad to get rid of it without expense.
Q. Do you pay anything for having it hauled away?
A. No, sir.
Q. When your men take it away what do they do with it?
A. They take it to different points. I don't know where they are hauling it, to tell you the truth. There was a while they dumped it into the river, and for a while they dumped it on the side of the creek.
Q. You don't know upon what land it is being dumped?
A. No; I could not say. I don't suppose I have seen one of the carts at the dump for over two years.
Q. What is that tract of land back of the barn used for?
A. Trying horses that are sold.
Q. Do you use any other portion of the property for that purpose, for speeding horses or anything of that kind?
1583 A. It is not for speeding horses at all. Horses sold at auction are sold to work in such a way—say a horse is sold with the guaranty that he is more than an ordinary traveler, he has got to be shown; he must be as we represent him.
Q. Once in a while you get a horse who has a good deal of speed, or is claimed to have, and you have a straight piece of ground on Bell street to speed him, have you not?
A. We speed anywhere at all; it don't make any difference. If they want it done on Genesee street, where the cars run, we go there.
Q. That piece of ground in front of the barn, on Bell street, is not paved, is it?

A. No; it is graded with cinders.
Q. I mean it is not paved with vitrified brick?
A. No, sir.
Q. Why is it not paved with brick?
A. I could not say why it is not.
Q. Is it not a fact that it is because it is a better and more appropriate place for handling your horses?

Objection. No answer.

Q. Why is it not paved, Captain?
A. That is something that the company controls. I haven't anything to do with the buildings or paving.
Q. You do not know why that piece of ground on Bell street is not paved?
A. I say, sir, it is like any other property that the company has. I may know why they pave and why they do not; it is not for me to say or actually know.
Q. What do you use it for?
A. The same as any other street, to get around among the buildings.
Q. What is Bell street in front of the yards used for?
A. Mostly for hauling supplies from the cars, switched in on that side—their brick, their cinders, their hay, and any other material.
Q. Do you use it for your horse and mule market at all?
A. We use it the same as we use any other street or any other place around the yards.
Q. You use any other street around your horse and mule market for the purpose of speeding and exercising horses that are for sale there as much as you do that?
A. I think I use it a good deal more than that.
Q. What other streets do you use?
A. Wyoming, Genesee, and streets in Armourdale.
Q. I want to ask you again, what is Bell street in front of
1584 the horse and mule market used for?
A. For loading and unloading the supplies and material of the company.
Q. What supplies?
A. Brick, cinders, hay, anything that they see fit to run in there on cars; that is the principal use of it.
Q. You do not dump all of your manure on the river bank?
A. I couldn't say where it is dumped.
Q. Who would know?
A. My team-haulers.
Q. Is there anybody who has charge of that, to direct where it shall be dumped?
A. I think Mr. Child does it.
Q. You don't know whether he directs your men where they shall dump it?
A. I certainly could not go to work and gainsay my friend, who says he does; of course, I have got to take his word for it.
Q. I say of your own knowledge you have no information?

A. No, sir.

Q. Do you know who permits those gardeners to take that manure away?

A. I do.

Q. Then your friend over here has nothing to do with that?

A. That is the only place where I do not recognize his authority at all.

Q. But when manure is to be dumped on stock-yards property your friend controls it?

A. When it is to be dumped on the property; yes; when it leaves the stable they dump it where they please; if you should come to me and want a cart-load you could have it.

Q. You would give it to me?

A. Yes; if a man would take a contract to keep the manure cleaned out I would give him a little something to do it; I would be glad to get rid of it.

Q. Therefore when people come along and want a load of it you are anxious to let them have it?

A. Yes, sir.

Q. When do they come and do that?

A. In the fall, winter, and spring.

Q. In the summer they do not come?

A. No.

Q. And you have to remove it yourself?

A. Mostly.

Q. Of course, wherever the company wanted this manure dumped you would put it there?

A. Yes, sir.

Q. If they wanted it on a certain portion of the river bank you would put it there?

A. Yes, sir.

Q. Are you familiar with the fact that any of this manure
1585 is being taken by the Armour people for filling up certain lands that they own?

A. No; I let Kirk Armour have several car-loads to haul over to his farm.

Q. What did he do?

A. He stood a couple of cars right there at the place and we filled them for him; how many I don't know; I was very glad to let him have it.

Q. Did you pay the expense of switching?

A. No, sir; I had nothing to do with that.

Q. Do you know anything about the filling qualities of this manure, or anything of that kind?

A. No, sir.

By Mr. HITE:

Q. The removal of the manure for dumping purposes is done under the direction of the stock yards company, is it not?

A. It is a difficult matter for us to get rid of this manure. I gen-

erally go to Mr. Child to find out what to do with it and he directs what shall be done with it.

Witness excused.

1586 C. S. GOULD, a witness produced by Mr. Boyle, attorney general, in answer to direct interrogatories propounded to him by Mr. Boyle, testified as follows, to wit:

Q. Where do you reside?
A. 3521 Magee street, Westport, Missouri.
Q. What is your business?
A. Superintendent of the boarding stable of the Kansas City Stock Yards Company.
Q. What constitutes the boarding stable of the Kansas City Stock Yards Company?
A. Where the commissionmen board their horses and where we keep our own horses.
Q. How many commissionmen board their horses there as an average?
A. We have on an average 100 boarders.
Q. Are you employed by the company on a salary?
A. Yes, sir.
Q. What is your salary?
A. $125 a month.
Q. How many men do you employ there in the stable and under your charge?
A. There is about ten to twelve; sometimes more, sometimes less.
Q. What do you charge the commissionmen for boarding their horses?
A. $12.00 a month for each horse.
Q. What service do you render to those horses?
A. We feed and take care of them.
Q. How many times a day do you feed?
A. Three times a day.
Q. What do you feed them?
A. Oats, corn, and bran.
Q. Do you curry them?
A. Yes, sir.
Q. What are the average wages of the men who work for you in the barn?
A. $40.00 a month.
Q. Do you know what $12.00 a month would be a day?
A. It costs about nine to nine dollars and a half a month to feed a horse—that is, not take care of him, but to feed him.
Q. Do you keep any transient horses in your stable?
A. Once in awhile; not to amount to anything.
Q. What do you charge a feed?
A. 25 cents.
Q. What does that include?
A. One meal.

Q. Does that include hay?
A. Yes, sir.
1587 Q. And service of the men?
A. Yes, sir.
Q. Is that a brick barn?
A. Yes, sir.
Q. What is the cost of one feed?
A. I don't know; I don't buy the feed.
Q. Who fixes the prices you charge of 25 cents a meal?
A. I fix it; it is the customary charge.
Q. I don't suppose you do business at a loss in feeding transient horses?
A. Ought not to lose very much.
Q. Would $12 a month be less than 25 cents a feed?
A. Why, yes; certainly.
Q. Who buys the corn, bran, oats, and hay for your department?
A. The purchasing agent.
Q. Of the company?
A. Yes, sir.
Q. What is the name of the purchasing agent?
A. Buffington.
Q. Where does he live?
A. On Penn street.
Q. Do you know what the charges are in the horse and mule department?
A. No, sir; I have nothing to do with them.
Q. Are there any books kept in your department?
A. Yes; a record of the number of horses and the amount of feed.
Q. Do you know whether your department is self-sustaining or not?
A. I don't know positively.
Q. What is your judgment about it?
A. I should think it just about paid expenses. It clears itself.
Q. It pays the labor?
A. Yes.
Q. And for maintaining the company's horses?
A. No; not for maintaining the company's horses. That is another thing. I understand your question, if I make enough out of transient business to keep the company's horses.
Q. What do you mean by transient business?
A. The commissionmen's horses. They pay enough to pay the labor through the feed.
Q. And that labor takes care of the company's horses?
A. No, sir; that is charged separately.
Q. Have you separate men for taking care of the commissionmen's horses?
A. Yes, sir.
Q. How many men have you for that purpose?
A. 11 men. There is just one man who works on the company's business.

1588 Q. All the balance take care of the commissionmen's horses?
A. Yes.
Q. And they are paid by the profits that are made?
A. I do not say they are paid by the profits.
Q. About maintain themselves?
A. Yes, sir.
Q. You feed them 3 times a day?
A. Yes, sir.
Q. That would be an average of 90 feeds per month?
A. Yes, sir.
Q. You buy the best quality of oats, corn, bran, and hay?
A. The very best.
Q. And give them all the water they can drink?
A. All they can swill down.
Q. Have you a book-keeper in your department?
A. No, sir.
Q. Who keeps the books for your department?
A. They are kept at the exchange.
Q. Haven't you a day book there?
A. Just keep a record, as I told you.
Q. Who keeps that record?
A. I do.
Q. What is it called?
A. I call it the feed book.
Q. Will that book show what amount of feed is used in the barn?
A. No, sir.
Q. Where is that book kept that will?
A. In the Exchange building.
Q. It simply discloses the number of horses and the amount each horse pays?
A. Yes, sir.
Q. That will show the income of the barn?
A. Yes, sir; so far as boarding is concerned.

Witness excused.

1589 E. PECK, a witness produced by the defendant L. C. Boyle, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to direct interrogatories propounded to him by Mr. Boyle, testified as follows, to wit:

Q. What is your business?
A. Shipping stock.
Q. Where do you live?
A. Jamestown, Cloud county, Kansas.
Q. Are you a raiser of stock?
A. No; I buy it.
Q. Do you buy on the market at Kansas City?
A. No, sir.
Q. From whom do you buy?
A. From the farmers and the men that raise stock.

Q. Do you ship hogs to the market?
A. Yes, sir.
Q. Sheep?
A. No, sir.
Q. Hogs and cattle?
A. Hogs mostly.
Q. How long have you been shipping to the Kansas City market?
A. About four or five years.
Q. Are you now actively engaged in that business?
A. Yes, sir.
Q. Have you a partner?
A. Yes, sir.
Q. What is the firm?
A. Peck & Barton.
Q. Have you a yard at Jamestown?
A. Yes, sir.
Q. What do you use the yard for?
A. We use it to put stock into until we are ready to ship.
Q. Have you scales?
A. Yes, sir.
Q. What do you use them for?
A. To weigh when we buy.
Q. How frequently do you ship to the Kansas City market?
A. About one or two loads a week is the way it generally runs; sometimes not more than one.
Q. When were you last there?
A. Yesterday.
Q. Did you take cattle there?
A. I took hogs and one steer.
Q. One car-load?
A. Yes, sir.
Q. What is the practice of shippers, to feed in the cars?
A. I feed in the cars.
1590 Q. Why?
A. On account of the high prices of grain.
Q. Do you know the prices that are specified in this new law?
A. I know it on hogs and cattle.
Q. C-n't you afford to feed at these yards?
A. It is too expensive?
Q. Could you afford to feed under the new charges?
A. Yes, sir; I think I would feed under the new charges.
Q. In your judgment, what would be the practice of shippers to Kansas City to feed in the yards if the new law were obeyed?
A. I can state for myself.
Q. What would you do?
A. I think I would feed in the yards.
Q. Do you know whether any considerable number of shippers feed in the cars and do not feed in the yards?
A. I know they do not; I can say that for most of them from our country.

Q. Are there a good many hogs raised in your part of the State?
A. Yes; on that road.
Q. What road?
A. The Union Pacific.
Q. Why don't they feed in the yards?
A. On account of the grain being so high.
Q. Now, if the charges specified in the law were in force, would the shippers along that road feed in the yards?
A. I think they would.

By Mr. HITE:

Q. Did you weigh that steer before you took him down yesterday?
A. Yes.
Q. What did it weigh before you left home?

Objection as not proper cross-examination.

Q. Did you weigh the hogs yesterday?
A. Yes, sir.
Q. How much did they weigh?
A. I can tell you what the shrink is if you want to know.
Q. Tell me what it was.
A. It was 320 pounds between Jamestown and Kansas City.
Q. How much did you pay for the corn you fed to those hogs?
A. I gave 12½ or 14 cents a bushel, I think.
Q. How many hogs did you have?
A. 71.
Q. How much did you feed the hogs?
A. Probably 2 or 3 bushels; I couldn't say.
1591 Q. Do you know what the average amount of feed to the car-load of hogs at the Kansas City market is?
A. I know what they used to feed.
Q. How much?
A. About a bushel and a half.
Q. How much would that be to the head?
A. I don't know.
Q. It wouldn't be 2 cents, would it?
A. I don't know.
Q. Well, at a dollar a bushel for 71 head in a car, and a bushel and a half to the car, would be about 2 cents a head, would it not?
A. Something like that.
Q. And you say you don't feed in the yards on account of the expense?
A. Yes, sir.
Q. About how — car-loads do you ship down there in a year?
A. About two a week.
Q. That would be about 3,000 a year?
A. It depends on the number of hogs in a car.
Q. Do you know the difference between what the company now charges and what it would charge under the law passed by the last legislature?

A. I think I do.
Q. What is the difference?
A. It is a dollar a bushel now.
Q. What would it be under the new statute?
A. I think it is 100% above what it costs them.
Q. What would it cost them?
A. I could not know.
Q. Then why do you say shippers would feed their stock in the yards under the new law?
A. I know pretty near what it would cost. It would cost from 45 to 50 cents a bushel. I don't know exactly.
Q. If you fed under the new statute it would cost about 60 cents to feed a car-load of hogs, wouldn't it?
A. About 40 or 50 cents.
Q. So you would save a cent on each hog?
A. Yes, sir.
Q. Now, how much would that add to the weight of your hogs?
A. 56 pounds, if they ate it all up.
Q. They usually eat it all up, don't they?
A. They depends on how long they have gone.
Q. You get pay for the increased weight?
A. Whatever they pay.
Q. You get paid when you feed them on the cars, don't you?
A. Yes, sir.
1592 Q. Still, you say you don't feed down there because you have to pay too much?
A. Yes; I think 50 cents is as good to me as it is to the stock yards company.
Q. One cent a head don't make much difference; how much difference would it make in the course of a year?
A. It would depend on the number I would ship.
Q. Last year how much difference would it have made?
A. I don't know how many car-loads I shipped.
Q. You never figured that out at all, did you?
A. No, sir.
Q. Why do you send your hogs to Kansas City?
A. Send them there to the market.
Q. Why not to Chicago?
A. It is too far.
Q. Did you ever send any hogs to Chicago? Did you ever fail to sell any hogs you sent to Kansas City?
A. No, sir.
Q. What do you think about the market in Kansas City for hogs?
A. I think it is a very good market.
Q. Do you know of any market in this country that is as good for hogs?
A. I don't know as I know of any better
Q. How much do they charge you for yardage on hogs?
A. Eight cents a head.
Q. You think that is too much?

A. I think it is rather high, yes.
Q. Why do you think so, Mr. Peck?
A. I think so because a person could do it for less money and make good wages.
Q. Do you know any place in this country where you can get it for less money?
A. No, sir.
Q. Why do you think it can be done for less money?
A. I could do it for less money if I had a chance to do it.
Q. You think you could give shippers a market for their hogs?
A. I think I could if the packing-houses would come out to my yards.
Q. Wouldn't you want something more than packing-houses?
A. I think that would be enough.
Q. Wouldn't you want buyers?
A. I think the buyers would come.

1593 Q. So you think if the packers and buyers would move out around your yards at Jamestown you could give them your yards, and furnish yardage at less than eight cents?
A. Yes, sir.
Q. Did you ever run stock yards?
A. No, sir.
Q. Do you know what it costs to run the Kansas City stock yards?
A. No, sir.

Witness excused.

1593½ N. B. GREER, a witness produced by the defendant L. C. Boyle, as attorney general of the State of Kansas, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to direct interrogatories propounded to him by L. C. Boyle, testified as follows, to wit:

Q. What is your business?
A. Live-stock commission business.
Q. How long have you been engaged in that business?
A. About six years I have been manager for Greer, Mills & Company.
Q. Where are you located?
A. Kansas City stock yards.
Q. In the Exchange building?
A. Yes, sir.
Q. How long have you been located there?
A. I have been with the firm about six years.
Q. They have been in the building that length of time?
A. Yes; longer than that.
Q. I will ask you to explain to the special master who it is that orders the feed for stock that is shipped to the Kansas City market for sale.
A. Usually the commissionman orders the feed, but that is governed by the owner of the stock.

Q. The commissionman gets his orders from the owner of the stock?

A. Usually; yes, sir.

Q. And follows out the instructions?

A. Yes, sir.

Q. Explain whether you are instructed not to order feed for stock at any time.

A. Yes; we very often receive orders not to feed stock on account of the exorbitant prices.

Mr. Hite moves to strike out the last part of the answer as a conclusion. Motion denied.

Q. Where do they feed when they don't feed in the yards?

A. In the car; corn to the hogs and hay to the cattle.

Witness excused.

1594–1597 EDWARD JAQUINS, a witness produced by the defendant L. C. Boyle, as attorney general of the State of Kansas, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to direct interrogatories propounded to him by Judge Martin, testified as follows, to wit:

Q. What is your full name?

A. Edward Jaquins.

Q. Were you a member of the last legislature of Kansas?

A. Yes, sir.

Q. State if you had any position on the live-stock committee of that body.

A. Yes, sir; I was chairman of that committee.

Q. Of which house?

A. Of the house of representatives.

Q. You were a member of that house?

A. Yes, sir.

1598 Direct examination by Mr. BOYLE on another subject-matter:

Q. What is your business?

A. I haven't been actively in any business for two years except shaving a few notes or something of that kind. Before that I was actively engaged in cattle-shipping for 35 years.

Q. In what way?

A. Raising and shipping cattle to the market.

Q. To what markets have you shipped cattle?

A. To Philadelphia, Lancaster, Buffalo, Chicago, Kansas City; but I have never shipped any to St. Louis.

Q. Have you been on the Kansas City market any considerable number of times with cattle?

A. Oh, yes; I expect hundreds of times.

Q. How extensive a shipper have you been, Mr. Jaquins?

A. I should say 2,000 head a year for ten or twelve years. Since that time I have handled a greater number of cattle in some ye-rs and a less number in others, and some years scarcely any.

Q. Did you visit the Kansas City yards personally with your cattle?

A. Most generally.

Q. Are you familiar with the service rendered or given your cattle when they are delivered at the Kansas City stock yards?

A. Yes, sir.

Q. What is that service?

A. From the company, you mean?

A. I mean from any person. What is the service that is given your cattle after they reach the yards?

A. When the cattle arrive, whether the owner is along or not, the commissionmen——

Q. What is done to your cattle?

A. They open the cars and let the cattle out onto a platform and into the chute pens. Then they are taken into the yards where they are calculated to be fed and watered. They are generally fed and watered on the order of the commissionman or the owner of the stock. Then they are sold or shipped on—generally sold and taken to the scales and weighed and then returned to some other pen, subject to the order of the purchaser of the stock. In taking them from the chutes, one fellow goes ahead and opens the pen and another comes along behind and drives them. In going from the scales back to the pens, one yardman goes and unlocks the gates and another drives them into the pens. Sometimes they go right to the loading chutes if they are to be shipped to Chicago or
1599 other places. It is all done very quickly and rapidly. The stock generally walks fast, or if it is wild cattle they will sometimes trot.

Q. Is it the practice for the cattle to reach the yards in the nighttime or the daytime? What is the custom?

A. In shipping from Caldwell and in that country we aim to ship at such a time of day that the cattle will arrive at the yards in the early morning, at daylight, or something like that, and get our cattle in the yards so that the feed-wagons which come out about 6 or 7 o'clock can feed them and get them ready for the market.

Q. As I understand you, it is the object to get the cattle there in the daytime?

A. Yes.

Q. Who is — that handles the cattle?

A. The commissionman generally superintends the handling of the cattle.

Q. You mean the commissionmen in person or does he have helpers?

A. Yes; he has helpers; they go to the cars and yard the cattle.

Q. Do the commissionmen help in driving and yarding the cattle?

A. Yes, sir.

Q. Do you know anything about shippers objecting to the yardmen of the stock yards company handling the cattle?

A. Well, the owner of the stock usually talks it over with the commissionman, and if he can get him to help handle the cattle he

considers it a great deal better than to have the yardmen handle them; they prod the cattle too much, and the owner is better satisfied to have the commissionman do it. He thinks his stock is not abused and misused quite so much; so it is customary for the commissionman to be on hand and handle the stock for his customer.

Q. You have had that experience?

A. Yes, sir.

Q. Do I understand that the commissionmen have helpers who drive the cattle to the pens the same as the yard company?

A. Yes, sir. They help to unload and are on hand to help take care of the stock.

Q. And one of the reasons is that the yardmen handle the cattle too roughly?

A. Yes; that is one of the motives.

1600 Q. You have described the service that is rendered to stock. Are you familiar with the value of that kind of service?

A. Yes; I think I can give a pretty close opinion on it.

Q. I asked you if you were familiar with it?

A. Yes, sir.

Preliminary cross examination by Mr. HITE:

Q. Where else have you shipped any cattle than to Kansas City?

A. I have shipped to Chicago, Philadelphia, Pittsburgh, Buffalo, and a good many local yards.

Q. When did you last ship any cattle?

A. I used to ship from Texas and fed on the way at Parsons, Sedalia, Hannibal, and Decatur, Ills.

Q. Were those markets or feeding stations?

A. They were feeding stations.

Q. When did you last ship cattle to Kansas City? Before answering that question do you know anything about the conditions at the Kansas City stock yards in the last 12 months?

A. No, sir; I have been there.

Q. Do you know anything about the conditions in 1895?

A. It was in the fall of 1894 that I shipped a train of cattle.

Q. Do you know anything about the service that is rendered since 1894?

A. No, sir.

By Mr. HITE: I do not think he is competent to testify on the subject and object to his doing so.

Objection overruled.

By Mr. BOYLE:

Q. Are you familiar with the provisions of the act of the legislature approved March 3, 1897, which is an act defining what shall constitute public stock yards, defining the duties of the person or persons operating the same and regulating all charges thereof, and removing restrictions in the trade of dead animals, and prescribing penalties for the violations of this act?

A. Yes, sir.

Q. I wish you would state whether or not, in your judgment, the charges therein provided for are reasonable and fair.

Mr. Hite objects to the question as incompetent, irrelevant, and immaterial, and calling for the conclusion of the witness. Overruled.

A. Yes, sir; my judgment is that they can make money under those charges.

1601 Q. I will ask you if in your opinion the charges are reasonable and fair to the stock yards company?

A. Yes, sir.

Q. I will ask you to state whether there is any disposition on the part of shippers to feed on the trains; and, if so, why is it, if you know?

Mr. Hite objects to the question as incompetent, irrelevant, and immaterial and calling for hearsay. Overruled.

A. I never had any experience myself in feeding on trains but once or twice, and it was most always unsatisfactory to me, but others have said to me it was the proper thing to do, especially in shipping hogs; that they can get their hogs fed in transit and save paying these extravagant prices for corn in Kansas City; they figure it is better from an economical standpoint not to feed in Kansas, but to feed in transit; that they get just about as good weight out of their hogs. As far as feeding hay is concerned on the road, unless you are going a long distance and your cattle are well domesticated, they won't eat out of the little troughs on the side of the car; a cow brute won't eat much hay unless it can get water; from the little experience I have had in feeding hay in transit, I don't like it.

Q. You may state from your experience as a shipper and knowledge of that business whether the shippers of hogs and cattle to the Kansas City market would more generally feed in the yards, if the charges prescribed by this act of the legislature were in force.

Mr. Hite objects to the question as incompetent, irrelevant, and immaterial and calling for hearsay.

By the MASTER: If he can answer the question, I think it is competent.

A. It is my opinion there would be more feeding, for people complain about the charges there; they take this other course of feeding to save charges and costs that they are subjected to in the yards.

And in answer to cross-interrogatories propounded to him by Mr. Hite, counsel for the complainants, the witness testified as follows, to wit:

Q. Do you know what it costs to operate the Kansas City stock yards?

A. No; not from personal knowledge. All the information I have was obtained from the witnesses who testified before my committee and what I have read in the newspapers of the evidence that has been produced by the attorney general.

1602

Q. Then, as I understand it, you don't know anything of your own knowledge of the cost of running the stock yards?

A. No, sir.

Q. Were you ever in the stock-yards business?

A. No, sir.

Q. What made you ship your cattle to Kansas City?

A. It was the cheap way to the great markets of the country. Formerly we shipped through Kansas City to Chicago and Buffalo, and simply stopped and fed at Kansas City. I don't suppose there was over 10 or 15 per cent. of the stock was sold in Kansas City.

Q. Whenever you shipped stock to Buffalo you stopped and fed at Kansas City?

A. Yes, sir.

Q. Did you ever take any cattle through there that you did not feed?

A. No, sir; I don't think I ever did.

Q. On what kind of billing was the stock shipped?

A. Well, supposing we are shipping from southern Kansas, we will consign to Chicago, with the privilege of Kansas City; that gives us the privilege of feeding or selling at Kansas City; if we do not sell, we can ship on to Chicago. By those means we get through rates.

Q. That is a sort of continuous billing through to the ultimate destination?

A. Yes.

Q. Is it not true that as a rule the cattle are shipped from this country on through billing to Chicago, with the privilege of the Kansas City market?

A. I think pretty nearly; yes, as it has come under my observation.

Q. Where stock is shipped through and not sold at Kansas City, you say the commissionmen take charge of the cattle and drive them to the pens?

A. Yes; their helpers with the stock-yards fellows. They have a kind of copartnership or association to protect the patrons, and these men take hold and help drive, etc.

Q. Now, what was done with your cattle when you did not sell them, but took them through to Chicago?

A. They were driven back and put onto the cars again.

1603

Q. Were they always fed in the yards?

A. I think I never took a lot of cattle through but what I fed.

Q. And then you would take them to Chicago and offer them on the market?

A. Yes, sir.

Q. What were the charges in Chicago for the same kind of service?

A. Twenty-five cents for yardage, and, I think, about the same prices for hay. I think it is all about one; Kansas City and Chicago the same. It used to be 20 cents yardage in Kansas City. I think it was in 1891 that they changed it and made it 25 cents a head. We used to figure on the difference in the expense it made in the handling of a steer.

Q. I understand you think the charges of the company are unreasonable?

A. Yes, sir.

Q. What makes you think so?

A. I think they are making more out of their business than any other class of people.

Q. Is that the reason you think they are unreasonable?

A. Yes; I think that things ought to be sort of equal in their profits.

Q. You don't know of any place where cattle can get the same service for less money?

A. Not in a large market like that; but I think they have all pooled on that figure, and they won't take less than a certain price. That is my judgment about it.

Q. Do you know whether they have pooled or not?

A. Nothing positive; no.

Q. I mean of your own knowledge?

A. No.

Q. So that, so far — you know, no cattle-shipper can get the same service for less money in any big market?

A. At no central market.

Q. What kind of a market is Kansas City?

A. Very good.

Q. Is it as good a market as Chicago?

A. On some classes of stock it is better.

Q. In the service that is rendered by the Kansas City Stock Yards Company do you take into consideration the market that they afford to shippers?

A. The stock-yards people?

Q. Yes.

A. I didn't know that they afforded any market.

Q. You don't know that they do?

A. No, sir.

1604 Q. Well, if they do afford a market, would that make any difference in your idea of the value of the service rendered?

A. The idea of the shipper is that the packers and eastern buyers, and so on, concentrate and make the market, and the stock yards company furnishes yardage, and so on; I didn't know that the stock yards company were buyers at all.

Q. Who got the packers to come to Kansas City?

A. I suppose that they came themselves, from the fact it would be a very good place to establish; the nearer they get to the cattle-

producing sections and the less freight they have to pay on the dressed product, the more lucrative it would be for their business.

Q. Will you say that every packer in Kansas City did not come there on special inducements offered by the stock yards company?

A. I wouldn't think he would.

Q. Will you say they did not do it?

A. I wouldn't say about that.

Q. Do you say it did not require inducements to bring them there?

A. I don't know.

Q. You don't know whether it did or not?

A. Not of my own personal knowledge. I have heard it reported.

Q. You say the packing-houses would make a market by reason of their proximity to the country where the steers were produced?

A. Yes, sir.

Q. Do you know about the Wichita market?

A. Yes, sir; the Wichita market has never yet got centralized with packers enough to make a market; besides, they have labored under great difficulties with the railroad companies; they can't get any cut rates down there in that country like they seem to have on the Missouri river; besides, they have only two packing-houses, and they are very small.

Q. How about the St. Joseph market; do you know anything about it?

A. I never shipped there; I have unloaded once or twice at Wichita and once at St. Joseph, but I don't think they have got any market to amount to anything at either place—purely local.

Q. When did you last sell any cattle in the Kansas City market?

A. I think it was two years ago last fall.

1605 Q. Did you ship the cattle through on this through billing that you spoke of with the privilege of Kansas City?

A. Yes; with the privilege of Chicago.

Q. Had you shipped many cattle through that way before that?

A. Yes; most always billed that way.

Q. Did you sell the last cattle you shipped in Kansas City?

A. Yes.

Q. Did you sell the cattle that you shipped previously at Kansas City, generally speaking, in the last few years?

A. Generally speaking, for the last ten years I have sold in Kansas City. I think there has not been more than one or two consignments that went on to Chicago. No; I am wrong. It was five years ago I shipped a bunch on to Chicago and lost money on them.

Q. Why did you ship on to Chicago?

A. The Kansas City market wasn't very satisfactory and I was in hopes that by the time the cattle reached Chicago the prices would rally and I would get a better figure on them.

Q. What was the result of that experiment?

A. The market rallied the other way and I would have done better if I had sold in Kansas City.

Q. Has not that been your invariable experience in the last five

years when you have refused to sell here and have gone to Chicago you have gotten the worst of it?

A. I think so in the last six or seven years.

Q. I understood you to say that in some respect Kansas City was a better market than Chicago. Is that true?

A. On certain classes of cattle, and I consider it all around, on the average, fully as good, taking the difference in freight between Kansas City and Chicago into consideration.

Q. Now, suppose you were offered four dollars a hundred for steers averaging 1,000 pounds in Kansas City, how much more would you have to get in Chicago to make it profitable to ship to Chicago?

A. I don't know just what the rates are from Kansas City to Chicago.

Q. Assuming that the rate is 23½ cents per cwt., with a switching charge of two dollars a car.

A. I will answer it this way: Unless within the last two or three years they have got better water in Kansas City than they had before, there would be scarcely any shrinkage in the weight of the animal from the weight you would get at Kansas City and
1606 the increased value you would get at Chicago. The water at Chicago is far superior to the Kansas City water. I suppose the Kansas City people do the best they can. They get the water from the Missouri river and the cattle don't seem to like it. Another thing, they come to Kansas City fresh from their good water and feed and they haven't got dry enough, but by the time they get to Chicago they have wolves' appetites, so they fill up better. So there is very little shrink between the two points if the stock is handled well.

Q. Does the filling up with water help to sell the cattle?

A. Yes—well, in this way: Now, a buyer who goes into the yards before he agrees on the price, he invariably looks at the fill of the stock. We used to sell at Kansas City either at chute weights—that is, before the cattle was unloaded, and there was considered 20 cents a hundred difference between chute weights and fed and watered weights. The cattle would bring 20 cents a hundred higher at the chute weight.

Q. How much water will a steer drink, on an average?

A. It depends on the condition in which the steer comes into the yards. Some sellers will not water 24 hours before shipping in order to get big weights. I don't think it makes any difference, because the buyer will take off according to the fill.

Q. About 20 cents a hundred?

A. They used to make that difference between chute weights and fed and watered weights.

Q. How much is that a pound?

A. About two mills.

Q. Now, you say that a dollar a hundred for hay is excessive?

A. It is extravagant. This same hay would cost from two to two dollars and -- half to put it up, and it certainly wouldn't cost them

more than a dollar a ton to get it to the yards, and they sell it for a dollar a hundred.

Q. What does the shipper sell that hay for when it goes into the cattle?

A. If he could pay for his hay and not have to sell his beef with it, he might make money out of the hay, but wind and water are the only things they furnish for nothing at Kansas City?

Q. What does he get per pound for his water?

A. I don't consider that he gets anything, for the buyers
1607 cut off the price in proportion to the fill, and he really does not make anything.

Q. Let us get at it; say they take off 20 cents a hundred.

Q. That is what they used to take off. I don't know what they do now.

Q. That is your experience?

A. Yes.

Q. That is one-fifth of a cent a pound they take off in consideration of the water the animals is going to drink?

A. Yes, sir.

Q. Suppose a steer drinks 50 pounds of water; he would get four dollars per cwt. for that water. How much is that a pound? Ain't that four cents a pound?

A. That would be two dollars for the steer, if he drank that much water.

Q. Ain't that four cents a pound?

A. Supposing, on the other hand, they take off 20 cents a hundred, wouldn't one offset the other?

Q. You say they take off 20 cents a hundred, and he gets two dollars. How much does the shipper make by that arrangement?

A. I shouldn't think he would make very much. You can figure it out mathematically. Suppose steer weighs 1,050 pounds after being watered; before he weighs 1,000 pounds. The chute weights would be 20 cents a hundred higher on the 1,000 pounds than.

Q. That is two dollars?

A. I don't think there would be much difference in favor of the shipper.

Q. There is no loss. He gets every cent he has paid out for the water and the hay?

A. I think one would offset against the other.

Q. But he pays nothing at all for his feed; he gets it back from the packer, doesn't he?

A. The more he feeds, the less the steer is worth, is the way I figure it; that is the way the buyers do; the more you fill the animal the less you get per pound.

Q. How much water will the average steer drink, in weight, if you know?

A. Well, it depends upon the character of the water and the nature of the steer; one who is used to drinking out of a trough will drink from 60 to 100 pounds, but a wild Texas or Arizona steer will frequently go the yards and not drink anything.

Q. I understood you thought the charges unreasonable because the stock yards company made too much money; is that it?

1608 A. That was one of the reasons. In explanation of that statement I would like to say they make more money than any other people I know of, the cattlemen not excepted.

Q. Do you know what sources of revenue they have outside of their yardage and feed charges?

A. Nothing, only hearsay; not personally.

Q. Were you ever engaged in the business of running a feeding station for cattle?

A. No; but I have paid a good many bills, though.

Q. Do you know what it costs to unload, feed, water, and load a car-load of steers?

A. I could approximate it pretty closely.

Q. Do so.

A. We will take four loads of steers; that will be a fair illustration. One man will go in front, another will drive the cattle. It would take those two men 35 or 40 minutes. The cost would be what it would cost to keep those two men, wouldn't it?

Q. I am asking you what it costs to unload, feed, water, and load four car-loads of steers.

A. I don't know anything about the water, but the hay costs the company, say, $4.50 a ton, timothy two or three dollars a ton more, and they sell prairie hay for one dollar and timothy for a dollar and a half a hundred.

By Mr. BOYLE: Where?

A. In Kansas City and in Chicago.

Q. To come back to our question, what does it cost to unload, feed, water, and load four cars of steers, adopting your illustration?

A. The hay would cost the company 25 cents a hundred, which would be a dollar for the four cars, 25 cents a car; that would be the cost of feeding. Then the unloading, feeding, watering, and loading would take about four hours work at 15 cents an hour; with the dollar for feed would make it $1.60 for the four cars.

Q. That would be forty cents a car, wouldn't it?

A. Yes.

Q. That is your best judgment, is it?

A. I think it could be done for that.

Q. Does anybody work in the yards for $1.50 a day?

A. Yes; and I think a good many for less. Of course, the figure I have given is the actual cost. I have not considered the value of the use of the yards at all.

Q. You say the commissionmen come around and help?

A. Yes.

Q. What do they get for their services?

1609 A. They get fifty cents a head for selling and collecting your money and paying over your guaranty.

Q. They get more than anybody else?

A. Well, the commissionmen have a good deal of risk to run in the way of their collections; they run the risk of the whole of this property that they receive there for the amount they sell it for.

Q. Don't they get their money when they sell it?

A. Sometimes they do and sometimes they don't; Jack Gillespie had to carry fifty or sixty thousand dollars up in Chicago for five or six years before he could collect it through the courts; their book-keeper may run off with the funds. So far as selling the stock is concerned, I don't think it is worth it, but they have a big risk.

Q. In the case you have taken, you do not consider the value of the market there?

A. Nothing at all.

Q. Nothing about the cost of the yards?

A. No, sir.

Q. Nothing about the cost of their structures?

A. No, sir.

By Mr. BOYLE:

Q. You stated on your cross-examination that they formerly charged 20 cents for yardage; I want to ask you if there was any complaint among stock-shippers to the effect that the Kansas City Stock Yards Company was not charging as much as the Chicago or St. Louis yards, and therefore they would take their cattle to those yards in preference to the Kansas City yards?

A. No, sir.

Q. What was the fact as to the disposition of shippers to take their stock to Kansas City when the charge was 20 cents in preference to taking them where 25 cents was charged?

A. They would figure on that difference; shippers who ship in there always figure on the contingent expenses of marketing their property, and that stands as one of the expenses to be deducted from the price, and it is true it would be taken into consideration and it would be quite an item to the shipper to consider if he had very many cattle.

Q. Would the reduction of the charges attract business to that yard?

A. Yes; I think it would.

1610 Q. You spoke of through billing; that, as I understand it, is to get a better rate?

A. Yes, sir.

By Judge HORTON:

Q. Will you tell the master whether more cattle were shipped to Kansas City before or after they raised the rate to 25 cents?

A. The cattle business has increased.

Q. Just answer my question.

A. More since.

Q. Before this rate was raised you used to ship your cattle to Chicago, did you not?

A. Yes, sir.

Q. After it was raised you sold them in Kansas City?

A. Yes, sir

Q. Kansas City has kept building up the stock market, the

packers have been concentrating there, and the shippers and buyers came in there, and more cattle have come there?

A. Yes, sir; the Southwestern country has been opened up and made Kansas City a central point.

Q. Is it not a fact that the difference in the market there is more than five cents?

A. Between 20 and 25 cents?

Q. Yes.

A. Yes; I think it is more than five cents a head, but I don't think the stock yards company ought to have credit for it.

Q. That, of course, is another question; but, as a matter of fact, the value of the market to the shipper has been raised more than the yardage has been raised?

A. Yes, sir.

Q. Why didn't you sell your cattle at the chute weights?

A. I never thought there was quite that difference.

Q. if you thought the chute weights better you didn't have to buy the feed?

A. That is very true, but I thought I made a little more money by feeding; others didn't think so, and sold by chute weights.

By Mr. BOYLE: Did I understand you to say to Judge Horton that they handled more cattle since the rate was raised because they increased the charges?

A. No; I didn't mean to say that.

Q. The cattle industry has increased materially in the West in late years, has it not?

A. Yes.

Q. In your experience, what has been the increase in the number of cattle marketed in the last 20 years?

A. I expect the receipts at Kansas City have doubled and trebled.

1611–1676 Q. I don't mean that. Has the cattle industry of itself increased in this corn belt here?

A. Cattle production has varied; there would be years, maybe five or six or seven years, when there would be a great supply of cattle, and then it would run down until the price would go up, and everybody would go to raising cattle and bring the price down again. Up until 2 years ago people have been much discouraged in raising cattle because the business has been unprofitable. Prices have run down on account of the large quantity of cattle.

Q. Have the charges of the Kansas City Stock Yards Company remained the same during this period?

A. Just the same, except they raised the cattle-yardage charge in 1891. They increased the cost to the producer of the animals instead of lowering it to other values. Two years ago prices picked up, and they are much better now than they were 2 years ago.

Witness excused.

1677 "Ex. L." C. H. N.

(T. F.)

Regulations Concerning Cattle Transportation.

U. S. DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *January* 27, 1897.

To the managers and agents of railroads and transportation companies of the United States, stockmen, and others:

In accordance with section 7 of the act of Congress approved May 29, 1884, entitled "An act for the establishment of a Bureau of Animal Industry, to prevent the exportation of diseased cattle, and to provide means for the suppression and extirpation of pleuropneumonia and other contagious diseases among domestic animals," and of the act of Congress which became a law April 24, 1896, making appropriation for the Department of Agriculture for the fiscal year ending June 30, 1897, you are hereby notified that a contagious and infectious disease known as splenetic, or southern, fever exists among cattle in the following described area:

All that country lying south, or below, a line beginning at the northwest corner of the State of California; thence east, south, and southeasterly along the boundary line of said State of California, to the southeastern corner of said State; thence southerly along the western boundary line of Arizona to the southwest corner of Arizona; thence along the southern boundary lines of Arizona and New Mexico to the southeastern corner of New Mexico; thence northerly along the eastern boundary of New Mexico to the southern line of the State of Colorado; thence along the southern boundary lines of Colorado and Kansas to the southeastern corner of Kansas; thence southerly along the western boundary line of Missouri to the southwestern corner of Missouri; thence easterly along the southern boundary line of Missouri to the Mississippi river; thence northerly along the Mississippi river to the northern boundary line of Tennessee at the northwest corner of Lake county; thence easterly along said northern boundary line to the northeast corner of Henry county; thence in a northerly direction along the boundary of the Tennessee river to the northwest corner of Stewart county; thence in an easterly direction along the northern boundary of Tennessee to the southwestern corner of Virginia; thence northeasterly along the western boundary line of Virginia to the northernmost point of Virginia; thence southerly along said boundary line to the northeast corner of Virginia where it joins the southeastern corner of Maryland, at the Atlantic ocean.

Whenever any State or Territory located above or below said quarantine line, as above designated, shall duly establish a different quarantine line, and obtain the necessary legislation to en-
1678 force said last-mentioned line strictly and completely within the boundaries of said State or Territory, and said last above

mentioned line and the measures taken to enforce it are satisfactory to the Secretary of Agriculture, he may, by a special order, temporarily adopt said State or territorial line.

Said adoption will apply only to that portion of said line specified, and may cease at any time the Secretary may deem it best for the interest involved, and in no instance shall said modification exist longer than the period specified in said special order; and at the expiration of such time said quarantine line shall revert without further order to the line first above described.

Whenever any State or Territory shall establish a quarantine line for above purposes, differently located from the above-described line, and shall obtain by legislation the necessary laws to enforce same completely and strictly, and shall desire a modification of the Federal quarantine line to agree with such State or territorial line, the proper authorities of such State or Territory shall forward to the Secretary of Agriculture a true map or description of such line and a copy of the laws for enforcement of same, duly authenticated and certified.

Such States or Territories as now have a line established as last above mentioned can immediately forward certified copies of said line and laws for the enforcement thereof, and if satisfactory to the Secretary of Agriculture, the same may be adopted at once and the Federal line so modified.

From the 15th day of February to the 15th day of November, inclusive, during each year, no cattle are to be transported from said area south or below said Federal quarantine line above described to any portion of the United States above, north, east, or west of the above-described line, except by rail for immediate slaughter, and when so transported the following regulations must be observed:

1. When any cattle in course of transportation from said area are unloaded above, north, east, or west of this line to be fed or watered, the places where said cattle are to be fed or watered shall be set apart and no other cattle shall be admitted thereto.

2. On unloading said cattle at their points of destination, pens, sufficiently isolated, shall be set apart to receive them, and no other cattle shall be admitted to said pens; and the regulations relating to the movement of cattle from said area, prescribed by the cattle sanitary officers of the State where unloaded, shall be carefully observed. The cars that have carried said stock shall be cleansed and disinfected as soon as possible after unloading and before they are again used to transport, store, or shelter animals or merchandise.

3. All cars carrying cattle from said area shall bear placards stating that said cars contain southern cattle, and each of the waybills of said shipments shall have a note upon its face with a similar statement. Whenever any cattle have come from said area

1679 and shall be reshipped from any point at which they have been unloaded to other points of destination, the cars carrying said animals shall bear similar placards with like statements, and the waybills be so stamped. At whatever point these cattle are

unloaded they must be placed in separate pens, to which no other cattle shall be admitted.

4. The cars and boats used to transport such animals, the chutes, alleyways, and pens used during transportation, and at points of destination, shall be disinfected in the following manner:

(*a.*) Remove all litter and manure. This litter and manure may be disinfected by mixing it with lime or saturating it with a 5 per cent. solution of carbolic acid; or, if not disinfected, it may be stored where no cattle can come into contact with it until after November 15.

(*b.*) Wash the cars and the feeding and watering troughs with water until clean.

(*c.*) Saturate the walls and floors of the cars, and fencing, troughs, and chutes of the pens with a solution made by dissolving 4 ounces of chloride of lime to each gallon of water. Or disinfect the cars with a jet of steam under a pressure of not less than 50 pounds to the square inch.

Cattle from the Republic of Mexico may be admitted into the United States to remain below said Federal quarantine line after inspection, according to law, but said cattle shall not be permitted to cross said quarantine line otherwise than by rail for immediate slaughter, except by special permit from the inspectors of the Bureau of Animal Industry, issued according to the regulations of the said bureau, and no permit shall be issued except for cattle free from splenetic, or Texas, fever, or from contact therewith during the three months preceding the issuance of said permit, and which have been grazed in a locality free from infection of such fever.

Notice is hereby given that cattle infested with the *boophilus boris*, or southern cattle tick, disseminate the contagion of splenetic, or southern, fever (Texas fever); therefore cattle originating outside of the district described by this order, or amendments thereof, and which are infested with the *boophilus bovis* ticks shall be considered as infectious cattle and shall be subject to the rules and regulations governing the movement of southern cattle.

Stock yards companies receiving such cattle shall place the same in the pens set aside for the use of southern cattle, and transportation companies are required to clean and disinfect all cars and vessels which have contained the same, according to the requirements of this department.

The losses which formerly occurred to the owners of susceptible cattle, both in the interstate and export trade, by the contraction of this disease from exposure in unclean and infected cars and pens, and by means of the manure carried in unclean cars from place to place, became a matter of grave and serious concern to the cattle industry of the United States until this danger was removed
1680 by the inspection of this department. It is absolutely essential, therefore, that this cattle industry should continue to be protected as far as possible by separating the dangerous cattle and by the adoption of efficient methods of disinfection.

Inspectors are instructed to see that disinfection is properly done,

and it is expected that transportation and stock yards companies will promptly put into operation the above methods.

All prior orders conflicting herewith are hereby revoked.

J. STERLING MORTON, *Secretary.*

Special Order Modifying Quarantine Line for the State of Texas.

U. S. DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *January* 28, 1897.

In accordance with the regulations concerning cattle transportation issued by this department January 27, 1897, the State of Texas has located a quarantine line, described as follows:

Beginning at the southwest corner of the county of Pecos, on the bank of the Rio Grande river; thence following the western boundary of Pecos county to the southeast corner of Reeves county; thence following the boundary line between the counties of Pecos and Reeves to the Pecos river; thence southeasterly, following the Pecos river to the northwest corner of Crockett county; thence easterly along the northern boundary of Crockett and Schleicher counties to the southeastern corner of Irion county; thence northerly along the eastern boundary of Irion county to the northeast corner of said county; thence northerly to the southern boundary of Coke county; thence westerly to the southwest corner of Coke county; thence northerly along the western boundary of Coke county to the southern boundary of Mitchell county; thence easterly to the southeastern corner of Mitchell county; thence northerly along the western boundary of Nolan county to the northwestern corner of Nolan county; thence easterly along the northern boundaries of Nolan and Taylor counties to the southeast corner of Jones county; thence northerly along the eastern boundary of Jones county to the northeast corner of said county; thence easterly along the northern boundary of Shackelford county to the southwest corner of Throckmorton county; thence northerly along the western boundaries of Throckmorton and Baylor counties to the northwest corner of Baylor county; thence easterly along the northern boundary of said county to the southeast corner of Wilbarger county; thence northerly along the eastern boundary of Wilbarger county to the Red river; thence continuing in a northwesterly direction along
1681 the course of said river to the southeast corner of Greer county; thence northerly, following the course of the North fork of the Red river to its intersection with the eastern boundary line of Wheeler county; thence north with the eastern boundary of Wheeler, Hemphill, and Lipscomb counties to the northeast corner of Lipscomb county; thence in a westerly direction with the northern boundary lines of Lipscomb, Ochiltree, Hanford, Sherman, and Dallam counties to the northwestern corner of Dallam county to the eastern line of New Mexico.

And whereas said quarantine line, as above set forth, is satisfactory to this department, and legislation has been enacted by the State of

Texas to enforce said quarantine line; therefore, in accordance with the regulations of January 27, 1897, the above quarantine line is adopted for the State of Texas by this department for the period beginning on February 15, 1897, and ending November 15, 1897, in lieu of the quarantine line described in said order of January 27, 1897, for said area, unless otherwise ordered.

J. STERLING MORTON, *Secretary.*

Special Order Modifying Quarantine Line for the Territory of Oklahoma.

U. S. DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *February* 2, 1897.

In accordance with the regulations concerning cattle transportation issued by this department January 27, 1897, the Territory of Oklahoma has located a quarantine line, described as follows:

Beginning on the Red river at the southeastern corner of the county of Greer; thence northerly following the course of the North fork of the Red river to its intersection with the southern boundary line of Roger Mills county; thence easterly along the southern boundary of Roger Mills and Washita counties to the southeastern corner of Washita county; thence northerly along the eastern boundary of Washita county to the northeast corner of said county; continuing in a northerly direction along the eastern boundary of the county of G to the southwestern corner of the county of Blaine; thence easterly along the southern boundary of Blaine county to the southeast corner of said county; thence north along the eastern boundary of said county to the northwest corner of Canadian county; thence east along the northern boundary of said county to the northeast corner of said county; thence north along the eastern boundary of Kingfisher county to the northeastern corner of said county; thence east along the southern boundary of O county to the southeast corner of said county; thence north along the eastern boundary of O county to the northeast corner of said county;
1682 thence east along the southern boundary of K county to the west line of the Ponca Indian reservation; thence north along the west line of said reservation to the northwest corner of said reservation; thence east along the northern boundary of the Ponca reservation to the Arkansas river; thence in a northerly direction following the course of said river to its intersection with the thirty-seventh parallel of north latitude at the southern boundary line of Kansas.

So much of the quarantine line for the State of Texas, described in the order of January 28, 1897, beginning at a point on the Red river at its intersection with the southern boundary line of Roger Mills county, and extending northerly and westerly therefrom, is hereby revoked during the enforcement of the above line for the Territory of Oklahoma.

And whereas said quarantine line, as above set forth, is satisfactory

to this department, and legislation has been enacted by the Territory of Oklahoma to enforce said quarantine line; therefore, in accordance with the regulations of January 27, 1897, the above quarantine line is adopted for the Territory of Oklahoma by this department for the period beginning on February 15, 1897, and ending November 15, 1897, in lieu of the quarantine line described in said order of January 27, 1897, for said area, unless otherwise ordered.

J. STERLING MORTON, *Secretary.*

Special Order Modifying Quarantine Line for the State of Arkansas.

U. S. DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *February* 2, 1897.

In accordance with the regulations concerning cattle transportation issued by this department January 27, 1897, the State of Arkansas has located a quarantine line, described as follows:

Beginning at the northwest corner of the county of Benton; thence southerly along the western boundary line of Benton and Washington counties to the southwest corner of Washington county; thence easterly along the southern boundaries of the counties of Washington, Madison, Newton, Searcy, and Stone to the western boundary of Independence county; thence southerly along the western boundary of Independence county to the southwest corner of Independence county; thence easterly along the southern boundary of Independence county to the southeast corner of Independence county; thence northerly along the eastern boundary of said county to the northeast corner of said county; thence easterly along
1683 the southern boundary of Lawrence county to the southeast corner of said county; thence northerly along the eastern boundary of said county to the southwestern corner of Greene county; thence easterly along the southern boundary of Greene county to the southern boundary of the State of Missouri and along said southern boundary of the State of Missouri to the Mississippi river.

And whereas said quarantine line, as above set forth, is satisfactory to this department, and legislation has been enacted by the State of Arkansas to enforce said quarantine line; therefore, in accordance with the regulations of January 27, 1897, the above quarantine line is adopted for the State of Arkansas by this department for the period beginning on February 15, 1897, and ending November 15, 1897, in lieu of the quarantine line described in said order of January 27, 1897, for said area, unless otherwise ordered.

J. STERLING MORTON, *Secretary.*

Special Order Modifying Quarantine Line for the State of Virginia.

U. S. DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *February* 5, 1897.

In accordance with the regulations concerning cattle transportation issued by this department January 27, 1897, the State of Virginia has located a quarantine line, described as follows:

Beginning at the boundary line of Virginia at its southwestern corner; thence easterly along the southern boundary of Virginia to a point coinciding with the summit of the Blue Ridge mountains; thence following the summit of said mountains northeasterly to the Blackwater river; thence easterly along the course of said river through Franklin county to its intersection with the Staunton river on the eastern boundary of Franklin county; thence in an easterly direction along the southern and eastern boundaries of Bedford county to the James river; thence following the James river to the southeastern corner of Charles City county; thence northerly and easterly along the western and northern boundaries of James City, Gloucester, and Mathews counties to the Chesapeake bay; thence south to the northern boundary of Elizabeth City county; thence west and north along the boundaries of Elizabeth City and Warwick counties to the James river; thence southeasterly along the course of the said river to the northwest corner of Norfolk county; thence south along the western boundary of said county to its intersection with the northern boundary of North Carolina; thence east along the southern boundaries of Norfolk and Princess Anne counties to the Atlantic ocean.

And whereas said quarantine line, as above set forth, is satisfactory to this department, and legislation has been enacted by
1684-1698 the State of Virginia to enforce said quarantine line, therefore, in accordance with the regulations of January 27, 1897, the above quarantine line is adopted for the State of Virginia by this department for the period beginning on February 15, 1897, and ending November 15, 1897, in lieu of the quarantine line described in said order of January 27, 1897, for said area, unless otherwise ordered.

J. STERLING MORTON, *Secretary.*

Special Order Modifying Quarantine Line for the State of North Carolina.

U. S. DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *February* 5, 1897.

In accordance with the regulations concerning cattle transportation issued by this department January 27, 1897, the State of North Carolina has located a quarantine line, described as follows:

Beginning at the northwestern corner of Ashe county at the northern boundary of North Carolina; thence along the western boundary of said State to the southwest corner of the county of Cherokee;

thence along the southern boundaries of the counties of Cherokee, Clay, Macon, Jackson, and Transylvania to the southeast corner of the county of Transylvania; thence northwesterly along the eastern boundary of Transylvania county to the southwest corner of the county of Buncombe; thence easterly along the southern boundary of the said county to the summit of the Blue Ridge mountains; thence in a northeasterly direction following the said mountains to their intersection with the northern boundary of the State of North Carolina.

So much of the quarantine line for the State of Virginia described in the order of February 5, 1897, beginning at the northwestern corner of Ashe county and extending easterly along the southern boundary of Virginia to the summit of the Blue Ridge mountains, is hereby revoked during the enforcement of the above line for the State of North Carolina.

And whereas said quarantine line, as above set forth, is satisfactory to this department, and legislation has been enacted by the State of North Carolina to enforce said quarantine line; therefore, in accordance with the regulations of January 27, 1897, the above quarantine line is adopted for the State of North Carolina by this department for the period beginning on February 15, 1897, and ending November 15, 1897, in lieu of the quarantine line described in said order of January 27, 1897, for said area, unless otherwise ordered.

J. STERLING MORTON, *Secretary.*

Endorsed: No. 7427, 7453. Filed Aug. 24. 1897. Geo. F. Sharitt, clerk.

1699–1701 Ex. 3. C. H. NETTELS.

Old K. C., K.

Statement of Personal Property

In the city of Kansas City, in the county of Wyandotte, in the possession or under control of —— ——, as Kansas City Stock Yards Co., liable to taxation on the first day of March, A. D. 1896, whose residence on said first day of March was school district No. —; residence, No. —, —— street; P. O., —.

Description of Personal Property.

	No.	Value.	Remarks.
		Dollars.	
Hay and grain		775	
Kaw River bridge		7,000	
Aggregate value of all other personal property		285	
Total taxable property		8,060	

STATE OF KANSAS, *Wyandotte County,* } ss:

I do solemnly swear that in the above statement I have truly set forth all personal property which by law I was required to list, either on my own account or in behalf of others, according to the best of my knowledge.

KANSAS CITY STOCK YARDS CO.,
Signed by E. E. RICHARDSON, *Treas.*

Sworn to before me and subscribed in my presence this 9th day of May, A. D. 1896.

[SEAL.] HARRY DARLINGTON, *Assessor.*

1702 EXHIBIT 6. C. H. NETTELS.

Kansas City Stock Yards Co., horse and mule department.

Statement of Receipts and Expenditures for Year 1896.

Receipts.

Feed	$57,225.44	
Commissions	19,116.20	
Blacksmith shop	748.85	
		$77,090.49

Expenditures.

Hay used	4,892,744#,	$12,786.92, at	5.22	per ton.
Straw used	1,099,065#,	2,685.50, at	4.88	"
Corn " bu	21,032.54,	4,769.47, "	22.7	per bu.
Oats " "	40,108.20,	7,583.20, "	18.90	"
Bran "	492,950#,	2,009.26, "	40	per cwt.
Corn chop	1,100#,	5.50, "	50	"
				29,839.85
Labor				23,645.40
Repairs to wagons				212.73
Supplies & shoeing				6,898.78
Advertising				2,464.03
Insurance				369.00
Rent of telephone				90.00
Worthless accounts				1,133.00
License				401.00
Postage				102.40
				65,156.19

	$77,090.49
	65,156.19
Net earnings	$11,934.30

Kansas City, June 3rd, 1897.

E. E. RICHARDSON, *Treasurer.*

(Offered, 925, Record.)
(Prepared by Richardson, clerk.)

(Endorsed:) 6. Kansas City Stock Yards Co., horse and mule dep't. Statement of receipts and expenditures for year 1896. 7427, 7453. Filed August 24th, 1897. Geo. F. Sharitt, clerk.

1703–1734

Exhibit 7. C. H. Nettels.

Kansas City Stock Yards Co., horse barn No. 2.

Statement of Receipts & Expenditures for Year 1896.

Receipts.

Collected for feed	$15,843.70

Expenditures.

Hay	701,570#,	2,809.65,	$8.00 per ton.	
Straw	180,190,	431.86,	4.79 " "	
Corn	648 bu.,	141.21,	21.79 " bu.	
Oats	13,920.24 bu.,	2,620.47,	18.82 " bu.	
Bran	23,980,	101.08,	42 " cwt.	
				6,104.27
				7,562.53
Labor				297.00
Supplies				13,963.80
Net profit				$1,879.90

Kansas City, June 3rd, 1897.

E. E. RICHARDSON, *Treasurer.*

(Prepared by Richardson and proven by him to be correct.)
(926, Record clerk.)

(Endorsed:) Ex. 7. 7427, 7453. Kansas City Stock Yards Co., horse barn No. 2. Statement of receipts and expenditures for year 1896. Gould barn. Filed Aug. 24th, 1897. Geo. F. Sharitt, clerk.

1735–1740

Ex. P. C. H. N.

Kansas City Stock Yards Co.

Statement of Salaries Paid.

President	$2,500
Vice-president & general manager	10,000
Assistant general manager	5,400
Treasurer	5,000
General superintendent	5,000
Attorneys	3,250
Cashier	2,700
Superintendent of construction	2,000
Total	$35,850

Kansas City, April 27th, 1897.

E. E. RICHARDSON, *Treasurer.*

(Endorsed:) Kansas City Stock Yards Co. Statement of salaries paid. Nos. 7427, 7453. Filed Aug. 24th, 1897. Geo. F. Sharitt, clerk.

1741 Ex. "L L." C. H. N.

Extracts from the Senate Journal of the Legislature of the State of Kansas for 1897.

FEBRUARY 9TH, 1897.

"Consideration of motions and resolutions.

Senate concurrent resolution No. 15 was read, and is as follows:

Whereas the legislature of the State of Missouri has appointed a committee to confer with a similar one from the legislature of Kansas, regarding the regulation and control of the stock yards located at Kansas City, Missouri, and Kansas City, Kansas; therefore, be it

Resolved by the senate of the legislature of Kansas, the house concurring therein, That a committee consisting of five members, two from the senate and three from the house, be appointed by the presiding officers of the respective bodies of the legislature of Kansas to meet and confer with the committee appointed by the legislature of Missouri for the purpose above stated.

The question being on the adoption of the resolution, a vote was taken, and the resolution was adopted."

Senate Journal of 1897, pages 394, 395.

FEBRUARY 10, 1897.

"The president announced as the committee on the part of the senate, in accordance with senate concurrent resolution No. 15, Messrs. Jumper and Morrow."

Senate Journal of 1897, page 413.

Endorsed: No. 7427, 7453. Ex. L L. Filed Aug. 24, 1897. Geo. F. Sharitt, clerk.

1742 Ex. M M. C. H. N.

Extracts from the House Journal of the Legislature of the State of Kansas for 1897.

FEBRUARY 10TH, 1897.

"Message from the legislature of the State of Missouri was read, and is as follows:

HOUSE OF REPRESENTATIVES,
JEFFERSON CITY, MO., *February* 5, 1897.

Mr. Whitecotton offered the following resolution, which was read and adopted:

Whereas there appears to be a great demand by the farmers of the State for legislation regulating charges made by the stock yards of this State; and

Whereas the legislature of Kansas has requested that this house appoint a committee to confer with a like committee appointed by the legislature of Kansas to confer as to legislation affecting said charges; and

Whereas it is necessary that legislation on this subject be uniform in adjoining States:

Resolved, That the speaker appoint a committee of the members of this house to correspond and confer with a like committee, if any, from each of the adjoining States as to securing the necessary relief from any excessive charges and to secure uniform legislation on said subject, and to report back to this house the result of their investigation, with recommendations as to legislation as the committee may seem proper, at as early time as may be convenient.

In compliance with the above resolution the speaker appointed the following committee: Messrs. Whitecotton, Macey, Aydelotte, Harrel, and Fitzgerald.

J. W. FARRIS, *Speaker.*

Attest: R. P. THOMPSON,
Ass't Chief Clerk.

Mr. Harrel introduced the following resolution, which was read and adopted:

Whereas by resolution adopted by this house on the 5th
1743 day of February, 1897, a conference committee, composed of five members, was appointed to confer with a like committee to be appointed by the speaker of the house of representatives at Topeka, Kansas, looking to the enactment of a uniform law relating to stock-yard charges; therefore, be it

Resolved, That the chief clerk of this house be instructed to forward a copy of said resolution to the speaker of the house of representatives, at Topeka, Kansas, with the request that a like committee be appointed by the Kansas house of representatives, to the end that an early conference between the two houses may be obtained.

J. W. FARRIS, *Speaker.*

Attest: R. P. THOMPSON,
Ass't Chief Clerk.

Senate concurrent resolution No. 14 was read and is as follows:

Whereas the legislature of the State of Missouri has appointed a committee to confer with a similar one from the legislature of Kansas regarding the regulation and control of the stock yards located at Kansas City, Mo., and Kansas City, Kas.; therefore, be it

Resolved by the senate of the legislature of Kansas, the house concurring therein, That a committee consisting of five members, two from the senate and three from the house, be appointed by the presiding officer of the respective bodies of the legislature of Kansas to meet and confer with the committee appointed by the legislature of Missouri for the purpose above stated.

The resolution was adopted.

Announcements.

The speaker appointed the following committee on the part of the house to meet with like committee of the legislature of Missouri: Jaquins, Ravenscraft, and Johnson, of Nemaha."

House Journal of 1897, pages 428, 429.

FEBRUARY 17TH, 1897.

"By unanimous consent, Mr. Jaquins, chairman of the select committee, submitted the following report:

Mr. Speaker, your committee on live stock, to whom was referred joint conference committee to meet a like com-
1744–1895 mittee from the State of Missouri, at Kansas City, beg leave to make the following report:

Mr. Speaker, your committee on live stock, appointed under senate concurrent resolution by yourself and the chairman of this committee, in company with the senate committee, went to Kansas City, Mo., and there met the committee from the assembly of the State of Missouri at the Midland hotel. We organized said conference committee on February 15, at 10 a. m., by electing the Hon. J. H. Whitecotton, of the Missouri assembly, as chairman, and Senator Morrow, of the Kansas legislature, as secretary of said joint committee.

We then thoroughly discussed the merits of substitute for house bill No. 87, as reported by the committee on live stock in this house, and your committee on conference decided that it would be judicious and wise legislation, and practically agreed to said substitute, and that it would be a good bill to enact into law to produce uniform legislation in both States.

Your committee found the committee from the Missouri assembly great, broad-minded, intelligent gentlemen, thoroughly imbued with the spirit of substantial and true reform in the interest of the whole people, rather than men bowed down to the greed of corporations and corporation attorneys.

Hoping, Mr. Speaker, that the results of our labor will be gratifying to yourself and the members of this house, we most respectfully submit this report.

EDWARD JAQUINS, *Chairman.*"

House Journal of 1897, page 598.

Endorsed: No. 7423, 7427. Ex. M M. C. H. N. Filed Aug. 24, 1897. Geo. F. Sharitt, clerk.

Exhibit 5, C. H. Nettels.

Income Ac.

From ledgers of the K. C. Stock Yards Co.

Ledger "F."

1884.					1884.		
M'ch 31.	To Journal D, dividend ac	349	29,844.00		Jan'y 1. By Journal D, 3.00 pr. shr., ac. construction	326	29,844 00
Dec. 31.	" " " " "	350	89,347.00		Dec. 31. " " " net profits for 1884	350	219,727 83
			119,180 83				
	Balc.						119,180 83
1885.					1885.		
Dec. 31.	To Journal D, dividend ac		149,270.00		Jan'y 1. By balance above		267,097 28
	Balc.		267,938.11		Dec. 31. " Journal D, net profit for 1885		267,938 11
					" balc. as above		
			267,938.11				267,938 11
J.	To am't transferred to Ledger F						

Ledger "F."

1886.					1886.		
Dec. 31.	To Journal E, dividend ac	41	119,400.00		July 1. By balc. from Ledger "F"	41	290,394 89
	Balc.		438,933.00		Dec. 31. " Journal E, net profits for 1886		
							438,933 00
1887.	To balance below		456,933.89		Jan'y 1. By balance as above		
					July 30. By Journal E, prem. on capital stock	82	18,000 00
							456,933 00
1887.					Aug. 1. " balc. above	103	1,058,067 00
Oct. 31.	To Journal E, capital stock	103	1,515,000.00		Oct. 31. " Journal E, construction ac		300,264 03
					Dec. 31. " " " net profit for 1887		
			1,971,933.89				1,358,331 03
Dec. 31.	To Journal E, dividend ac	131	150,600.00				
	Balc. below		155,664.03				
			306,264.03				306,264 03
Dec. 31.	To balc. transferred to Ledger G	426	155,664.03		1887.		
					Dec. 31. By balance as above		155,664 03

Ledger G.

1888.					1888.		
Dec. 31.	To Journal E, dividend ac	221	282,800.00		Jan'y 2. By balance from Ledger F	485	155,664 03
	Balc. below		215,173.83		Dec. 31. " Journal E, profit & loss ac	221	342,309 80
			497,973.83				497,973 83
1889.					1889.		
Dec. 31.	To Journal E, dividend ac	313	327,200.00		Jan'y 1. By balance as above		215,173 83
	Balc. below		255,573.41		Dec. 31. " Journal E, profit & loss	313	363,599 58
			582,773.41				578,773 41
Dec. 31.	To am't transferred to Ledger H	505	255,573.41		" balance as above		255,573 41

Ledger H.

1890.					1890.		
Dec. 31.	To Journal E, dividend ac	404	404,000.00		Jan'y 1. By balance from Ledger "G"	426	255,573 41
31	" " " " "	405	323,200.00		Dec. 31. " Journal E, profit & loss	405	447,683 78
					" 31. " balance below		23,942 81
			727,200.00				727,200 00

A. A. GODARD ET AL.

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Exhibit 5, C. H. Nettels—Continued.

1891.				1891.			
Jan'y 1.	To balance above		23,942.81	Dec. 31.	By Journal F, profit & loss	68	425,489 18
Dec. 31.	" Journal F, dividend ac	68	311,143.00				
	Bale. below		90,403.37				
				Dec. 31.	Bale. as above		90,403 37
	To bale. transferred to Ledger I	461	90,403.37				
		Ledger I.		1892.			
1892.				Jan'y 1.	By bal. from Ledger H	505	90,403 37
Dec. 31.	To Journal F, dividend ac	167	370,592.00	Dec. 31.	By Journal F, profit & loss	167	465,356 37
Dec. 31.	" bal. below		185,167.74				
1893.				1893.			
Dec. 30.	To Journal F, dividend ac	276	286,694.00	Jan'y 2.	By balance as above		185,167 74
	Bale. below		430,291.44	Dec. 30.	By Journal F, profit & loss	276	541,817 70
				Dec. 30.	By balance as above		430,291 44
Dec. 30.	To bale. transferred to Ledger J	531	430,291.44				
		Ledger J.		1894.			
1894.				Jan'y 1.	By balance from Ledger I	461	430,291 44
July 1.	To Journal G, dividend ac	9	266,684.00				
July 31.	" bale. below		163,607.44	Aug. 1.	By balance as above		163,607 44
				Dec. 31.	" Journal G, profit & loss	61	626,682 29
Dec. 31.	To Journal G, dividend ac	61	451,133.50				
31.	" balance below		339,356.23	1895.			
				Jan'y 1.	By balance as above		339,356 23
1895.				Dec. 31.	" Journal G, profit & loss	188	610,907 00
Dec. 31.	To Journal G, dividend ac	188	544,816.00				
31.	" bale. transferred to Ledger K	303	395,447.23	1896.			
				Jan'y 1.	By bale. from Ledger J	531	395,447 23
1896.		Ledger K.		Dec. 31.	" Journal G, profit & loss	326	655,811 15
Dec. 31.	To Journal G, dividend ac	326	862,610.50				
31.	" bal. transferred to Ledger L	327	188,647.88	1897.			
				Jan'y 1.	By balance from Ledger K	303	188,647 88

(Endorsed:) Ex. 5. 7427, 7453. Filed Aug. 24, 1897. Geo. F. Sharitt, clerk.

Exhibit 4. C. H. Nettels.

Profit & Loss Ac., K. S. Stock Yards Co.

		Dr., 1896.	Dr., 1895.	Dr., 1894.	Dr., 1893.	Dr., 1892.	Dr., 1891.	Dr., 1890.	Dr., 1889.	Dr., 1888.	Dr., 1887.	Dr., 1886.	Dr., 1885.	Dr., 1884.
Dec. 31	To K. C. Sand Dredge Co.													
	" labor ac	211,262.19	194,205.06	182,518.21	180,854.41	182,179.70	168,873.21	183,900.05	158,641.28	144,246.92	129,479	112,213.27	111,988.05	104.10
	" repairs ac	32,321.95	40,726.61	55,697.38	22,942.05	25,546.26	17,611.67	38,864.19	23,511.63	28,894.79	19,852.41	12,032.68	13,276.69	102,873.14
	" cleaning yards ac	8,116.09	7,400.72	7,403.20	6,605.84	9,679.99	8,742.41	9,950.35	6,835.70	7,016.70	4,027.15	3,478.85	3,407.20	10,411.73
	" expense ac	66,191.65	61,297.54	50,048.13	43,535.93	38,492.29	31,364.23	35,003.39	28,985.58	21,429.60	26,428.51	22,116.01	18,209.92	6,027.77
	" insurance ac	12,836	12,325	11,504.23	9,658.65	7,224.37	5,822.37	6,105	5,456.80	4,965.80	5,092.30	4,055.03	2,754.35	20,953.16
	" rent Mo. Fac. y'ds ac	400	400	400	400	400	400	400	400	400	400	400	400	881.40
	" " Union " "	800	800	800	800	800	800	800	800	800	800	800	800	333.33
	" " West Side " "	6,000	6,000	6,200	7,200	7,200	7,200	4,800						800
	" Texas ac	22,671.25	23,646.12	23,333.11	19,912.14	16,871.24	23,670.65	14,679.90	14,229.37	13,354.37	8,640.83	8,018.12	6,080.68	6,400.17
	" income (net profits)	655,811.15	610,907	626,882.29	541,817.70	465,356.37	425,489.18	447,683.78	363,599.58	342,209.80	306,264.03	290,394.89	287,007.28	219,727.83
	" lost & damaged stock ac	1,292.77	2,125.69	1,711.29	882.81	788.29	1,862.49	3,739.94	1,265.12	1,489.50	833.80	100.11	1,042.97	424.17
	" interest ac												394.64	414.10
	" F. E. Short & Co., managers horse & mule dept.		50	50	50	50.00	561	3,296	1,455	6,623.72	9,043.87	8,585.84	2,702.37	
	" switching ac													
	" W. S. Tough, mgr. horse & mule dept	5,967.51	11,546.72	10,275.78	6,073.72	7,153.89	3,161.75	6,342.58	7,066.50	1,056	937.92	1,038.14		
		1,023,870.20	971,430.46	976,825.62	840,733.25	761,733.40	695,558.96	755,765.38	612,296.66	572,517.20	511,755.82	463,232.94	448,062.35	360,260.90

		Cr., 1896.	Cr., 1895.	Cr., 1894.	Cr., 1893.	Cr., 1892.	Cr., 1891.	Cr., 1890.	Cr., 1889.	Cr., 1888.	Cr., 1887.	Cret., 1886.	Crt., 1885.	
Dec. 31	By yardage ac	665,658.05	614,080.64	630,801.68	546,027.23	676,576.87	443,550.23	496,868.06	381,986.12	342,399.73	305,001.33	266,699.28	271,346.87	216,052.45
	" hay ac	112,769.58	114,362.22	108,273.56	92,210.64	97,811.53	91,387.66	89,028 37	71,811.12	82,278.81	58,306.42	46,142.98	45,980.34	49,619.27
	" grain ac	36,914.11	47,215.10	47,434.70	30,704.95	37,089.93	41,620 25	31,173.16	39,635.30	27,220.96	40,140.54	45,920.01	44,079.74	27,348.28
	" { horse barn ac. horse & mule market ac.					21,478.18	12,988 04	17,102.90	18,586.80	19,617.93	23,244.70	21,778.04	14,855.11	12,689.45
		28,134 44	25,064.70	20,487.17	17,728.84	14,349 14	9,869.21	9,631.01	7,059.83	4,826.31	4,501.17	3,979.89	3,681.35	2,739.03
	" horse barn ac., No. 2 ac	9,739.43	9,079.99	7,613.70	11,267.73	9,389.04	3,923.78	4,958.67	4,254 41	4,078.63	$5,821.47	5,136.93	5,312.12	4,356.17
	" " " ac., commission ac	19,116.20	22,203	20,792.42	12,377.57	70,040 25,239.01	65,482 22,061.11	79,432 21,939.24	60,387.50 18,092.29	53,912 18,843.61	49,620.50 18,544.46	42,987 17,377.47	48,332.50 12,455.32	43,641.50 11,654.75
	" loading & unloading ac	76,803	68,712	73,352	69,560.50	6,151	2,358.19					2,680	2,010	1,160.10
	" rent ac	68,706.73	60,042.56	54,155.39	38,727.44			2,527.22	1,616	4,848	3,636	1,387.61		
	" dividend on bank stock ac	2,400	2,400	2,400	2,400				1,200.16	1,345.40	1,359.83	8,499 644.73		
	" trackage ac				170.05	3,342.88	2,148.60	2,510.18	7,487.22	13,145.82	1,679.40			
	" profits K. C. Belt R'y Co stock ac					266.02	178.89	296.18	99.91					
	" interest ac	2,336.53	7,920.10	10,777.51	280.70			73.39						
	" barn ac	437.13	350.15	296.82	210.35									
	" conscience fund ac							225						
	" premium on capital stock ac	855		440.67	19,147.25									
		1,023,870.20	971,430.46	976,825.62	840,733.25	761,733.40	695,558.96	755,765 38	612,296.66	572,517.20	511,755.82	463,232.94	448,062.35	389,260.90

(Endorsed:) 7427-7453. Ex. 4. Filed Aug. 24th, 1897. Geo. F. Sharitt, clerk.

1967 In the Circuit Court of the United States in and for the District of Kansas, First Division.

CHARLES U. COTTING, Complainant,
vs.
KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants. } No. 7427.

FRANCIS LEE HIGGINSON, Complainant,
vs.
KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants. } No. 7453.

Causes consolidated.

Exceptions

Taken by the complainants to the report made herein by George W. Clark, special master of this court, to whom the foregoing suits, as consolidated, were referred for findings of fact by an order of this court made and entered on the twelfth day of April, 1897, and which said report was filed in this court on the twenty-fourth day of August, 1897.

The complainants protest and protesting that they should not be compelled by the order of this court to file these exceptions on or before the eleventh day of September, 1897, because they are entitled under the equity rules to one month from the filing of the report of the special master herein, in which to prepare and file exceptions to the report of the special master, which was filed in this court on August 24, 1897.

First Exception.

For that the said master, in his said report, in finding No. 1, on pages four and five thereof, has undertaken to give the history of the development of the property known as the Kansas City stock yards and its ownership by persons and corporations other than defendant stock yards company; whereas the said master should have confined his statement of facts to the manner of the acquisition of said property by said defendant, The Kansas City Stock Yards Company, which was incorporated under the laws of the State of Kansas on the tenth day of December, 1883, and commenced doing business on the first day of January, 1884.

The complainants further except to said finding No. 1 for the reason that said master has attempted to report to this court matters and things not referred to him in the order of reference heretofore mentioned.

1968 *Second Exception.*

For that the said master, in his said report, in finding No. 2, on page five thereof, states the area of land owned by persons and corporations other than the defendant Kansas City Stock Yards Company; whereas the said master should have wholly omitted any reference to the ownership or area of any property used for stock yard or any other purpose by any person or corporation other than defendant herein, The Kansas City Stock Yards Company, and whereas said master should have confined his report to the questions submitted to him in the order of reference heretofore mentioned and to the questions presented by the bills exhibited in these suits.

Third Exception.

For that the said master in his said report in finding No. 3, on page three thereof, has attempted to convey to this court the idea that The Kansas City Stock Yards Company, defendant herein, was in the possession of the real estate mentioned in finding No. 2, heretofore excepted to, and has attempted to recite facts with reference to the condition of the real and personal property owned and used by persons and corporations other than The Kansas City Stock Yards Company, defendant herein; whereas the said master should have confined his report to the ownership, condition and value of the property of The Kansas City Stock Yards Company, defendant herein, the facts stated in said finding being without bearing upon any of the questions submitted to the master in the order of reference or presented by the bills exhibited in these suits.

The complainants further except to said finding for that the master in the last paragraph thereof has stated as a fact the cause of the starting and building up of the live-stock market at said stock yards, but has omitted therefrom all reference to the erection of the beef, pork and mutton packing establishments in the immediate vicinity of the stock yards, and the railroads and switch connections of said stock yards, all of which were secured by the energetic, persistent and continued efforts of the Kansas City Stock Yards Company and by the payment by the company of large sums of money and other property to the actual value of more than $679,377.10, and which said packing establishments, railroad and switch connections aforesaid, have been the potential factors in creating a live-stock market at the Kansas City stock yards,

1969 "which has grown to its present magnificent proportions."

Said complainants further except to said finding for that the master has stated as facts certain matters and things wholly inconsistent with the statement of facts made by the master in said report in finding No. 5 thereof, on page 6, hereafter more specially referred to.

Fourth Exception.

For that the master, in his said report, in finding No. 5, on page 6 thereof, has reported to this court facts concerning expenditures

made by persons and corporations other than defendant The Kansas City Stock Yards Company, prior to December 10, 1883, for the purpose of establishing valuable connections with property then and prior thereto owned by such persons and corporations, and has reported to this court that the sum of $817,944.28 was expended by said Kansas City Stock Yards Company, defendant herein, for such purposes; whereas the said master should have reported to this court that The Kansas City Stock Yards Company, defendant herein, has expended the sum of $697,377.10 for such purposes. The sums stated in said finding as expended by persons and corporations for such purposes prior to December 10, 1883, to wit, $120,567.18, the master should have found created business connections, which were acquired by The Kansas City Stock Yards Company, defendant herein, on or about January 1, 1884, the undisputed testimony given before said master at the hearing had by him conclusively establishing the fact that the value of the real and personal property, together with all business connections and other franchises, good will, privileges, and contracts owned and possessed by persons and corporations other than The Kansas City Stock Yards Company, defendant herein, prior to the date of such acquisition by purchase, were included in the conveyance to said The Kansas City Stock Yards Company, defendant herein, by said other persons and corporations; and that said tangible and intangible property was at the time of said conveyance of the actual real value in money of $1,990,000, and that the same were paid for at that time by the said Kansas City Stock Yards Company, defendant herein, with its stock, of the par value of $1,990,000, which said stock was, as found by said master in finding No. 48, on page 26 of his said report, of the value of at least one hundred and ten dollars per share of the par value of one hundred dollars.

1970 Complainants further except to said finding for that the said master has attempted to convey to this court the idea that the expenditures, so made for such purposes, were not of the value in money heretofore stated; whereas the master should have reported that the money and property expended by the defendant herein, The Kansas City Stock Yards Company, was, at the time of its expenditure, of the actual value of more than the sum of $697,377.10.

And for that the said master has attempted to convey to this court the idea that the packing-houses established by Kingan & Company and Hollis & Company had not contributed to the establishment of the live-stock market at said stock yards; whereas said master should have reported that the said packing-houses so established largely contributed for many years to the establishment of said market.

The complainants make particular reference to the following testimony, which is relied upon in support of this exception:

Page 149, Record.

Testimony of C. F. Morse.

"Q. When the new company was organized, they bought up the stock of the old company, did they, or what did they do? How did they effect that purchase?

A. It was paid to the stockholders of the old company. There was $1,990,000 paid for the property of the former company at the time of the organization of this company, January 1, 1884, $1,990,000.

Q. How many shares of stock had been issued?

A. I suppose 19,900. They were issued at par.

Q. In 1884?

A. Yes, sir.

Page 153:

Question by the MASTER: The original purchase from the other stock yards company was $1,990,000?

A. Yes, sir.

Page 155:

Question by the MASTER: Do I understand you to say that the stock yards as they then (in 1884) existed cost $1,990,000?

A. Yes, sir.

Q. That much money had been invested in the stock yards?

A. I do not say that. I say that represented the cash value.

Q. At that time as you estimated it?

A. Yes, sir.

Page 171:

Q. Do I understand that the first investment of $1,990,000 was cash paid in to the company?

A. It represented the cash value of the property at that time (1884) and was paid for in stock of the company at par.

Page 170, the witness states: I think the amount I stated as the capital, $1,990,000, was the conservative value of the property at that time. (The context shows the witness was referring to the property conveyed as described in the conveyance of January 1, 1884.)

1971 Page 171:

Q. That is simply your estimate ($1,990,000) of what the property was worth at that time?

A. It was my estimate, and that of others."

Fifth Exception.

For that the master, in finding No. 6 of his said report, on pages 7 and 8 thereof, has reported to this court as facts certain matters and things with reference to the incorporation, growth, ownership of property and issuance of stock of and by corporations, other than

The Kansas City Stock Yards Company, defendant herein; whereas the master should have reported to this court only such matters and things as concerned the incorporation, business, ownership of property and issuance of stock of and by The Kansas City Stock Yards Company, defendant herein.

And for that the master has reported in said finding to this court matters and things relating to the purchase by The Kansas City Stock Yards Company, defendant herein, on January 1, 1884, of the property described in a certain deed of conveyance of said date, made to it by persons and corporations theretofore owning and possessing such property, that the consideration for such conveyance to said The Kansas City Stock Yards Company, defendant herein, was a mere nominal sum; whereas the master should have reported to this court the fact disclosed by the undisputed testimony given at the hearing had by him, that the actual, *bona fide* consideration from The Kansas City Stock Yards Company, defendant herein, to its grantor in said deed, was the issuance and delivery of capital stock of the said Kansas City Stock Yards Company, defendant herein, of the par value of $1,990,000, which said stock at the time of said delivery was of the actual value in money of more than its par value.

And for that the master, in said finding, has attempted to convey to this court the idea that the said conveyance was not an actual, *bona fide* transfer of property and an actual purchase thereof by The Kansas City Stock Yards Company, defendant herein, at and for the said purchase price of $1,990,000; whereas the master should have reported to this court the fact conclusively shown by the testimony introduced before him, that said transfer and purchase was an actual *bona fide* transaction whereby The Kansas City Stock Yards Company, defendant herein, acquired the actual ownership of real, personal and mixed property which was at the
1972 time of said transfer of the actual real value in money of more than $1,990,000.

And for that said master has reported to this court that the stockholders of The Kansas City Stock Yards Company, defendant herein, at the time of said transfer and conveyance of said property were identical with the stockholders of the corporation grantors in said conveyance; whereas the master should not have reported to this court such fact, even if it existed, as the names or identity of persons who are stockholders in separate and distinct corporations are wholly immaterial and impertinent to any question submitted to said master in the order of reference heretofore mentioned or presented by the bills exhibited in these suits.

And for that said master has reported to this court in said finding that on December 10, 1883, the corporation then and prior thereto owning and possessing the property, real, personal and mixed, thereafter conveyed to The Kansas City Stock Yards Company, defendant herein, was reorganized; whereas said master should have reported to this court the fact conclusively shown by the testimony produced before him, that The Kansas City Stock Yards Company, defendant herein, is a separate and distinct corpo-

ration, which had no legal existence whatever prior to December 10, 1883, and is in no sense the same as or identical with the corporation or persons who owned the property heretofore described prior to December 10, 1883.

And for that the master in said finding stated that no distinction is made by him in his report between the several distinct and separate corporations therein named, "but treats them as being one and the same;" whereas said master should have reported that The Kansas City Stock Yards Company, defendant herein, was first duly chartered and incorporated on the tenth day of December, 1883, "for the purpose of the construction, maintenance and operation of union stock yards, and such buildings, hotels, railways and switches as may be necessary for that purpose," and that "the places where the business of said corporation is to be transacted are in the county of Wyandotte and State of Kansas, and in Jackson county, in the State of Missouri," and that its articles of incorporation were first duly filed in the office of the secretary of state of the State of Kansas on said tenth day of December, 1883, and that said
1973 company duly organized and commenced the transaction of the business as authorized by its chartered articles of incorporation aforesaid, on the first day of January, 1884; and whereas the said master should have reported that the existence of The Kansas City Stock Yards Company, defendant herein, dated from December 10, 1883, the time of filing its charter aforesaid, and that said corporation was an entity, distinct and separate from each and every other corporation or company referred to in said report.

(The complainants bring to the attention of the court, by reference in this exception, the following testimony, relied upon to modify said finding No. 6:

See, among the exhibits and testimony reported by the said special master and now on file in this court, certified copies of articles of incorporation of The Kansas City Stock Yards Company, and the subsequent amendments, filed December 10, 1883, July 2, 1887, and February 16, 1894.

See, also, the evidence of C. F. Morse, referred to in previous exception.

The complainants also rely upon the undisputed testimony given before the special master by C. F. Morse, as shown in the Record, page 972. The testimony referred to, as given by Mr. Morse at said page 972 of the record, is that:

At the time of the conveyance of 1884 by the owner of the property then known as the Kansas City Stock Yard Company, being possessed of a large amount of property which the corporators of The Kansas City Stock Yards Company, defendant herein, did not desire to purchase, such property in excess of the amount which was actually conveyed by deed of conveyance on January 1, 1884, was divided among the stockholders of the Kansas City Stock Yard Company, and only such property of the old corporation as the new corporation desired to acquire and use was transferred to them or taken possession of for the purpose of carrying out the intention of the corporators of the new company, defendant herein. Prior to

this conveyance, this property, undesired for stock yard purposes, belonging to the old corporation, was distributed among the stockholders in the shape of property dividends.)

Sixth Exception.

For that the master, in finding No. 7 of his report, on page 8 thereof, has stated in the last sentence of said finding that the
1974 present net cost of a certain tract theretofore in said finding designated by the letter B, was $32,305.53; whereas said master should have reported to this court that the cost of said tract to The Kansas City Stock Yards Company, defendant herein, is and was included in the original purchase price paid by the said defendant to the grantor in the deed of conveyance mentioned in exception 5, and as a separate transaction the defendant The Kansas City Stock Yards Company, did not acquire said tract by purchase or otherwise. The said tract so referred to by the special master, except the $\frac{671}{1000}$ of an acre sold to the Rock Island Railroad Company, was a part of the original purchase; and whereas the master should have reported to this court, in answer to the question submitted to him respecting the cost of the property owned by the defendant, The Kansas City Stock Yards Company, ultimate facts based upon the purchase price paid by the said defendant, The Kansas City Stock Yards Company, in January, 1884, to wit: $1,990,000, and should have added thereto the purchases since that time by said defendant, The Kansas City Stock Yards Company, together with such expenditures for the improvement of the real estate as the evidence disclosed had been made by The Kansas City Stock Yards Company, defendant herein, since said purchase.

(Complainants present to the court and rely upon the testimony presented before the master at the hearing heretofore referred to in exceptions Nos. 4 and 5; and also the evidence of C. F. Morse shown on page 150 of the record, that:

"The capital stock in 1884 was $1,990,000, which the company (defendant stock yards) had paid as representing the cash value at that time (of the property acquired about January 1, 1884, by the defendant The Kansas City Stock Yards Company) the capital stock which was issued in payment for the property (property just mentioned). There has been stock sold for cash at par from 1884 up to December 31, 1887, $2,759,516. These two items make $4,749,516. There has been invested from the earnings of the company, in cash, $1,437,882, within those same periods, making a total cash expenditure of $6,187,398. That represents the cash investment."

N. B.—It is proper to say that in reaching the final conclusion with reference to the cash invested in the property, the witness inadvertently, as shown by his other evidence, included in the last amount of $6,187,398 the sum of $120,567.18 expended by the old corporation to procure the establishment of two of the packing establishments.)

1975 *Seventh Exception.*

For that the master, in finding No. 8 of his report, on pages 8 and 9 thereof, attempts to convey to this court the information that in 1876 "the company" acquired title to certain lands referred to by the master as lying adjacent to the north yards, hereinafter more particularly mentioned; whereas the master should have reported to the court the fact disclosed by undisputed testimony given before him at the hearing, that "the company" which acquired title in 1876 to the land referred to in this finding was not the defendant, The Kansas City Stock Yards Company, but another and distinct corporation, and that the land described in this finding was a part of the original purchase made by The Kansas City Stock Yards Company, defendant herein, on or about the first of January, 1884, heretofore in these exceptions particularly mentioned.

And for that the master in said finding attempts to convey to this court the idea that the parcel of land referred to in this finding is not now occupied for stock-yards purposes and ought to be excluded entirely in estimating the area of the part of the defendant company's stock yards known as the north yards; whereas the master should have reported to the court the fact, as disclosed by undisputed evidence, that the parcel of land referred to in this finding, lying adjacent to the north yards, is intended to be used by the defendant stock yards company, together with other parcels of land hereinafter more particularly referred to, for the purpose of rounding out its property in that vicinity, with the express design of completing necessary connections between the stock yards and the Armour Packing Company's beef and pork packing establishments lying adjacent thereto, and for additional railroad facilities.

(The complainants present to the court and rely upon the testimony of C. F. Morse, on page 183 of the record, to wit:

"Q. In order that I may understand that thoroughly, the extension (referring to the parcel of land described in this finding, together with other parcels lying adjacent thereto) does not grow out of any anticipation of increase of business, but merely for the purpose of better facilitating that which you have?

A. That is the main purpose, yes, sir; it is in general for that reason. The railroads there are actually without any chance to develop any further on that side and the railroad facilities at times now are very much cramped, and we have got to put in more tracks in order to enable the railroads now doing business there to do it promptly."

The testimony referred to begins on page 182 and ends about the middle of page 183.)

1976 *Eighth Exception.*

For that the master, in finding No. 9 of his said report, on page 9 thereof, conveys to the court information wholly irrelevant and impertinent to the matters submitted to him in the order of reference heretofore mentioned and to the issues presented by the bills

exhibited in these suits in that he states that in 1876 "the company" purchased for stock-yards purposes a tract of land in Missouri, but subsequently abandoned the idea of using it for stock-yards purposes and thereupon conveyed said property to trustees for the benefit of the stockholders, the transaction being in the nature of a real-estate dividend; whereas the master should have reported the fact clearly and conclusively shown, that The Kansas City Stock Yards Company, defendant herein, was not in existence in the year 1876; that it had no stockholders in that year; that the conveyance recited in that finding was made by the grantor of The Kansas City Stock Yards Company, defendant herein, a different and separate corporation, to trustees for the benefit of its then stockholders, who were not stockholders of The Kansas City Stock Yards Company, defendant herein, at the time of such conveyance; and whereas The Kansas City Stock Yards Company, defendant herein, has never had or claimed to have any interest whatever in such tract of land, nor have the stockholders of The Kansas City Stock Yards Company, defendant herein, as such ever claimed to have any interest whatever in said land.

For that the master attempts to convey to this court the information that the Kansas City Stock Yards Company was the same corporation as that which conveyed said land to trustees for the benefit of its stockholders; whereas the master should have reported that the corporation which conveyed said lands was not The Kansas City Stock Yards Company, defendant herein.

Complainants further except to said finding for the reason that the language used in said finding by the master is misleading and not responsive to any question submitted in the order of reference.

Plaintiff presents to the court here and relies upon the testimony of C. F. Morse, as shown on page 972 of the record, the substance of which testimony is as follows:

That prior to the time of the conveyance by the old corporation to The Kansas City Stock Yards Company, defendant herein, of the property described in the deed of January, 1884, the old
1977 corporation conveyed the land mentioned in this finding to trustees for the benefit of its own stockholders.

And on page 976, in substance the following:

"Q. And that distribution having been made, (referring to the distribution of the land described in this finding among the stockholders of the old corporation) that property is not now and never has been held in trust by anybody for the benefit of the present corporation, has it?

A. No, sir.

Q. Nor any part of it?

A. No, sir."

Ninth Exception.

For that the master, in finding No. 10, on page 9 of his report, states that from 1876 to 1886 "the company" purchased real estate in Missouri, at a cost of $185,198.13, thereby attempting to convey to this court the information that the defendant, The Kansas City

Stock Yards Company, made such purchase of such real estate; whereas the master should have reported that the defendant, The Kansas City Stock Yards Company, made no such purchase and that the property referred to in this finding was a part of the original purchase made by the defendant, The Kansas City Stock Yards Company, in 1884, heretofore particularly described in previous exceptions; and whereas the language employed by the master in attempting to convey such information is misleading and is not responsive to any question submitted to him in the order of reference, nor to any issue presented by the bills exhibited in these suits.

(The complainants present here and rely upon the testimony referred to in findings Nos. 6, 7 and 8.)

Tenth Exception.

For that the master, in finding No. 16 of said report, on page 10 thereof, finds that the total cost of real estate owned and used by the Kansas City Stock Yards Company in the operation of its yards is $2,064,984.56; whereas the master should have found the cost of the property owned and used by The Kansas City Stock Yards Company, defendant herein, in the operation of its yards and the cost thereof as follows:

Tracts described and cost thereof stated by the master in findings Nos. 10, 12 and 13	$1,691,619.59
Tracts described and cost thereof stated by the master in finding No. 11	102,659.44
Total cost, as found by the master in findings Nos. 10, 11, 12, 13, of land purchased by the defendant company since its incorporation.	$1,794,279.03
To which the master should have added the original price paid by the defendant company to its grantor in consideration of the conveyance to it of January 1, 1884	1,990,000.00
And should have added for improvements, the cost of which the master finds in finding No. 44.	1,480,000.00
1978 And the expenditures by said Kansas City Stock Yards Company, defendant herein, to create connections, live-stock market, etc., as per finding No. 5 of said report	697,377.10
And from these figures the master should have found the total actual cost in money of the plant operated, owned and used, consisting of the same area of land stated by the master in finding No. 16, with the improvements thereof, as such plant existed at the time of the commencement of these suits.	$5,971,656.13

And for that the master in said finding finds that the said Kansas City Stock Yards Company, defendant herein, owned no other real estate which it used for stock-yard purposes than that described in

said finding; whereas the master should have found that The Kansas City Stock Yards Company, defendant herein, at the time of the commencement of these suits, owned and used for stock-yards purposes 8.028 acres on the west side of the Kansas river and opposite the main yards in Kansas, appearing on Exhibit Z as "D," and worth $41,140, said tract of land being used by said Kansas City Stock Yards Company at said time as an essential part of its stock yards; and whereas the master should have found that The Kansas City Stock Yards Company, defendant herein, at the time of the commencement of these suits, owned, used, and occupied 12.122 acres lying west of the tract marked "E" on Exhibit Z, worth $125,000, the said last-mentioned tract being at said time actually used by the said Kansas City Stock Yards Company as an essential part of its stock yards; and whereas the said master should have found that The Kansas City Stock Yards Company, defendant herein, at said time owned and used other property, which the said master has failed to include in said finding.

(The complainants here present and rely upon the evidence heretofore referred to in exception No. 4 to finding No. 5 of said report, and also to the evidence referred to in exception No. 5 to finding No. 6 of said report; and also to the findings of the master in his report under findings Nos. 10, 11, 12, 13 and 44.)

Eleventh Exception.

For that the master, in finding No. 19, on page 11 of his report, attempts to recite the facts relating to the service rendered by The Kansas City Stock Yards Company, defendant herein, in consideration of the payment to it of the *per capita* charge mentioned by the master in finding No. 18, known as "yardage," and fails to state all of such facts; whereas the master should have re-
1979 ported to the court that in addition to the services rendered by the defendant company in consideration of the payment of such charge mentioned in said finding, the said Kansas City Stock Yards Company furnishes to the shipper or owner of live stock of every description probably the best live-stock market in the West, and that said company, as part consideration for such payment, grants to such shipper or owner the privilege of exposing his property for sale at such market, which is described in the third finding of said report of said special master as "a market at Kansas City which has grown to its present magnificent proportions," and that the market so afforded by the said defendant company is of great value to the said shipper or owner of stock; and whereas the master fails to report other facts material to the question of service rendered by the defendant company for yardage charges, among other things the service performed of dipping sheep under United States Government regulations, the use of alleys, viaducts, switches, quarantine yards, and other appliances.

(The complainants present to the court here and rely upon the testimony of J. H. Wait, at pages 712 and 713, wherein the witness in substance testifies as follows:

"Cattle bring more on the Kansas City market than they do in Chicago."

Also the testimony of Charles J. Booth, pages 696 and 697 of the record, wherein the witness testified as follows:

"As a rule it is best to sell at Kansas City. You take nine out of ten shipments that have gone to Chicago have lost money."

On page 90 of the record, H. P. Child testified as follows:

"Q. You were asked by the attorney general what service is rendered for this twenty five cents a head (for yardage). I will ask you to state whether or not the shipper is given the privilege of the market?

A. Yes, sir.

Q. That is one of the things he gets?

A. Yes sir, and a very important one which I overlooked."

The testimony of H. P. Child, pages 162, 163, 164, 165, 166, and 167, is to the effect, in substance, that the Kansas City Stock Yards Company is the greatest factor in the creation of the live-stock market which the master described as having grown to magnificent proportions, at the stock yards of The Kansas City Stock Yards Company, defendant herein.

The testimony of Donnell N. Palmer, on page 472, is as follows:

1980 "Q. How does the market afforded at the Kansas City stock yards compare with the markets elsewhere?

A. Well, the market at Kansas City is a mighty good one. It is a good strong market. I can speak from our experience."

Page 47 of the record, testimony of the same witness as follows:

"Q. You think that Kansas City, next to Chicago, is the greatest market in the world?

A. No question of that."

Reference is also made to the last sentence of finding No. 18, on page 11 of the report, wherein the master reports to the court that the owner or shipper of live stock not only enjoys the privilege of offering his stock for sale in the stock yards of the defendant stock yards company, but "no yardage charge is made unless the stock is sold in the yards."

Page 34 of the record, testimony of H. P. Child, the witness stated as follows:

"It is necessary to dip sheep in various preparations to kill what is called sheep scab. The United States Department of Agriculture, which has charge of the live-stock interests of the country, has established certain quarantine rules, and in compliance with them or a portion of them the stock yards company was compelled to put in this sheep-dipping plant, where any parties wishing to buy sheep for the country, that is, to take out of the yards except to slaughter, may have them dipped in a preparation which is approved by the United States inspector located at the stock yards. That plant the stock yards company has built and thoroughly equipped at a cost of about $12,000.

Q. State what kind of water, as to whether hot or cold, has to be furnished to it.

A. The water has to be hot, ordinarily at 105 degrees, with a curative agent mixed with it. The furnace for heating that the stock yards company furnished, and also fuel.

Q. State whether or not any charge is made for furnishing this hot water.

A. There is no charge made for it by the stock yards company.

Q. Except in the yardage and feeding?

A. Except in the yardage and feeding. It is just that much more expense added to the conditions which existed before."

Pages 38 and 39, testimony of H. P. Child:

Substance of his testimony is that the shippers of live stock originating in Kansas, by reason of the market afforded at the Kansas City stock yards, received $1,600,000 more than they would have received had the stock been shipped to Chicago.)

Twelfth Exception.

For that in finding No. 21 of the said report, on page 12 thereof, the master, in the last paragraph but one of said finding, attempts to convey the information to this court that the large number of deliveries of feed which the Kansas City Stock Yards Com-
1981 pany made covers the increased cost for such large number of deliveries so made; whereas the master should have reported that this increased cost was not overcome by such large number of deliveries, the undisputed testimony on this subject being to the effect that such large number of deliveries in such small quantities occasioned a largely increased cost, and there is no testimony supporting the conclusion of the master just referred to.

Exception Twelve and One-half.

For that the master, in finding No. 22 of his report, on page 12 thereof, fails to report to this court that while a large portion of the live stock unloaded during the daytime is taken there by commissionmen or their employés from the place of unloading to the pens where they are to be exposed for sale that a great deal of such live stock is driven by the defendant stock yards company to such pens, and that such defendant company, by reason of the necessities of its business, is compelled to have a large force of men at each and all trains, to yard all of the live stock received, both in the daytime and in the night time, the commissionmen or owners of such live stock being under no obligation whatever to receive and yard such stock; whereas the master should have reported to the court the facts which are hereto'ore in this exception stated as having been omitted, and also should have reported to the court that the stock yards company, defendant herein, is responsible to the railroad companies for the care of such stock, notwithstanding it may be in the hands of such commissionmen or their owners.

Exception Twelve and Three-fourths.

For that the master, in finding No. 26 of his report, and on pages 14 and 15 thereof, has reported to the court that practically all the live stock that is received by the company is received in Kansas, and such as is shipped out loaded into cars from chutes located in Kansas; whereas the master should have reported that four-fifths only of the live stock received at the yards is received in Kansas, the other one-fifth being received in Missouri, and should have reported to the court that this applies not only to cattle, but to calves, hogs and sheep as well; and whereas the master should have reported that four-fifths of the cattle are loaded into cars from the chutes in the State of Kansas, and the other one-fifth is
1982 loaded into cars from the chutes situated in Missouri, and should have reported to this court that two of the tracks owned by the stock yards company and situated in the yards within the State of Missouri are daily used for the unloading of hogs and sheep, as well as cattle, and that live stock unloaded from these tracks are driven across the State line to pens in Kansas, and when loaded out on these tracks are driven from the Kansas pens to the loading chutes which are in Missouri. The complainants present here the following evidence on this subject:

Thirteenth Exception.

For that the master, in finding No. 33 of his report, on pages 17 and 18 thereof, has undertaken to inform the court concerning the receipts and expenses of The Kansas City Stock Yards Company, defendant herein, for the year 1896, and the method employed by the master in conveying such information to this court is wholly misleading and does not conform to the facts presented upon this subject at the hearing before him; whereas the master should have confined himself in this finding to a report of the sources from which the income of the said defendant company for the year 1896 was derived, and should have reported to this court that the parties to these suits entered into a stipulation and agreement in writing with reference to the receipts and expenditures of the said defendant company for the year 1896, the language employed by the parties in that regard being as follows:

"For the purpose of removing any question which may exist in regard to the manner in which the earnings of the stock yards company were disbursed during the years 1892, 1893, 1894, 1895 and 1896 for operation, maintenance and extension of improvements, it is agreed as follows:

* * * * * * *

1896:

The gross earnings were $1,023,870.20.

From this amount there was expended, in addition to the $368,059.05 shown by the 'profit and loss account' for that year, the following amount..... $176,394.60

This amount was disbursed for the following purposes:

For completion of the new Missouri addition to the Exchange building, begun in 1895. $24,854.35
(This includes $386.08 for a new vault in the Kansas part of the building.)

For completing power plant begun in 1895. 5,950.56
(See that item in that year's account.)

On horse stable..... 220.77
(Expense of constructing wash-room to take the place of former one, including material and labor.)

On horse stable, H. & M. department..... 33.92
(Labor and painting.)

On mule stable, H. & M. department..... 831.12
(Constructing office rooms in the building.)

On horse and mule stable..... 1,541.18
(Taking out old front of Sparks barn and rebuilding it about 25 feet further front, on street line, making the building larger.)

For transit-house..... 56.13
(Making additional windows.)

On hay and grain barns..... 4,276.95
1983 (For moving one barn, enlarging it and fitting it up, $600, and the rest for the erection of three new barns where there had been none before.)

On scale-houses and scales..... 6,228.77
(For completing two scale houses and scales in Missouri extension, and building two scales and scale-houses in the hog division on the north side, and one in the sheep division on the north side. All new and original construction except the one in the sheep division on the north side, which took the place of a house which had become unfit for use.)

Sundry small buildings..... 1,163.91
(Of this amount, about $700 was expended in rebuilding a worn-out train office, which originally cost about $300 and which was inadequate for the business. The balance is for putting up new buildings, including a train office in the north yards, where there had been none before.)

Chutes and fences	24,892.56	
(Fences in new yards in new Missouri extension.)		
Drainage	2,416.09	
(Construction of and laying new drainage pipes in the north yards, taking the place of former drainage system there, the new ones being required in consequence of the different arrangements of the new water supply.)		
Office furniture, new	1,052.44	
Brick paving	75,169.87	
(Of this amount, $44,492.07 was expended for paving to take the place of paving in alleys, plank flooring worn out, and the rest, $30,677.80 was expended for paving the pens in the new Missouri extension.)		
Railroad tracks, lifting jack	7.42	
Hog sheds	4,420.65	
(Portion of a large amount expended for rebuilding hog sheds, which portion was estimated as a betterment over original cost of the former sheds, the new sheds covering an additional area equal to the capacity of eleven cars of stock.)		
Sheep sheds	12,541.71	
(New sheep sheds built in the north yards on the site of former cattle pens.)		
Viaducts	6,809.80	
(Expended for an extension in the main yards of viaducts built in 1894.)		
Water supply	3,926.40	
(For pipes, hydrants, etc., to carry water to pens and new hog and sheep sheds in the north yards necessitated in place of former water pipes, etc., by re-arrangement of the sheds.)		
		$176,394.60
This account is credited this year with the following items:		
Estimated value of material credited to 'flooring cattle pens and alleys,' being old material taken therefrom	6,489.43	
Horses belonging to the company, sold	294.00	
Wagons and carts sold	26.52	
		6,809.95
Balance		$169,584.65

(The complainants, in support of the above exception, rely upon the written stipulation of the parties now and heretofore on file with the special master and in this court, as expressing the agreement of the parties in regard to the subject-matter thereof.)

Fourteenth Exception.

For that the master, in finding No. 33½ of his report, on page 18 thereof, asserts the right to modify the formal stipulation and agreement of the parties with reference to the disbursements for
1984 operation, maintenance and extension of improvements of The Kansas City Stock Yards Company, defendant herein, for the year 1896; whereas the master should have reported to this court that the question of the disbursements for operation, maintenance and extension of improvements of The Kansas City Stock Yards Company, defendant herein, for the year 1896 was the subject of a formal stipulation and agreement of the parties to these suits and that in conformity to such stipulation he should have informed the court of the facts and embodied said stipulation in his report.

And for that the master attempts to convey to this court by the latter part of said finding the idea that the disbursements mentioned in said stipulation were not properly chargeable against earnings for the year 1896; whereas the master should have reported to this court that all of the disbursements particularly described and mentioned in said formal stipulation and agreement of the parties were actually made out of the earnings of the said Kansas City Stock Yards Company, defendant herein, and no part of said money so disbursed was derived from any other sources whatever.

(The complainants present here and rely upon the formal stipulation and agreement of the parties heretofore filed with the special master and now on file in this court; and also the evidence of C. F. Morse on pages 178, 179, 180, 181, 182, 183 and 184, wherein the said record shows that the said witness testified in substance as follows:

That the expenditures described in the stipulation heretofore mentioned were necessary and essential to the proper maintenance of an efficient condition of the stock-yards plant; that unless the company made a provision of a sum approximately the same as that described in said stipulation for purposes of operation, cost of maintenance and extension of improvements, it would be impossible to keep the plant in a serviceable condition; that no extensions of the plant or system of stock yards had been made during the year 1896, and that no extension of said plant or system was contemplated; that the annual receipts by the company of live stock was approaching or had already reached a maximum; that any increase in the annual receipts of the company would necessarily be derived from competitive territory; that it would require an annual average expenditure of at least $500,000 to maintain the Kansas City stock yards in their present serviceable condition; that the funds
1985 necessary to operate and maintain the plant in serviceable condition must be derived from earnings, and that no part

of the disbursements of the company for the year 1896, as described in said stipulation, had been derived from any other source than earnings and had not been capitalized.

The witness further testified in substance that the company had purchased in 1894 seven small tracts of land, designated on Exhibit Z as small "e," and that it was the intention of the company to round out the north yards by completing the purchase of such tracts of land as would accomplish this purpose, the whole additional expenditure hereafter not to amount to more than 70 or $80,000; that such rounding out of the north yards was necessary because of the cramped condition of railroad facilities at that place, and also because of the necessities of the packing-house establishments located in that vicinity.)

Fifteenth Exception.

For that the master, in finding No. 34 of his report, on page 19 thereof, attempts to present to this court an argument on behalf of the attorney general, defendant herein; whereas the master should have entirely omitted from said finding all of the contention of the attorney general and presented to this court findings of fact only in said finding No. 34.

And for that in the last part of said finding the said master again attempts to present an argument to this court on behalf of the attorney general, defendant herein, and reports to this court the cost of the tangible property embraced within what is known as the horse and mule department of the Kansas City stock yards, evidently for the purpose of enabling the attorney general, defendant herein, to more forcibly present any contention on his part, and not for the purpose of throwing any light upon any of the questions submitted to said master by the order of reference hereinbefore mentioned.

And for that the said master has presented to this court separately the income and disbursements of the Kansas City stock yards in its horse and mule department; whereas the master was not authorized by anything in the order of reference herein or in any issue presented by the bills filed in these suits, to single out any particular department operated by the defendant company from any other department, and that, as shown in finding No. 33 of his report, the said stock yards company, defendant herein, derived large
1986 sums from operations other than those referred to in the alleged statute in controversy in these suits, which said sources of income should have been by the master treated in the same manner as he has treated the income and disbursements in the horse and mule department of The Kansas City Stock Yards Company, defendant herein, or all of said sources should have been generally and not specifically treated.

Sixteenth Exception.

For that the master, in finding No. 35 of his report, on pages 19 and 20 thereof, attempts to report to this court what would have been the result to the business of The Kansas City Stock Yards

Company, defendant herein, for the year 1896 if the rates, rules and regulations in the alleged statute, approved March 3, 1897, and complained of in the bills in these suits, had prevailed during that year, and in said finding the special master, in treating of the transactions of the defendant company in feed, separates the transactions of said company in feed into two or three classes, and in said finding the special master fails to convey to this court any intelligent idea of the true effect upon the business of the defendant company transacted in 1896, if said rates, rules and regulations had been prevailing during that year; whereas the master should have reported to this court in detail the following facts:

The stock yards company, as shown by the stipulation of the parties to these suits, received in 1896 a gross income of $1,023,870.20, and disbursed during the same time, for operation, maintenance and extensions of improvements, as shown by the same stipulation, the sum of $537,643.70. The rate per cent. of such disbursements to gross income is 52.51 %.

The gross income stated in said stipulations was derived from the following sources:

Yardage of cattle, calves, hogs and sheep	$665,658.05
From feed sold (after deducting its cost)	187,994.69
Commissions received in horse and mule department	19,116.20
From railroads for loading and unloading cars	76,803.00
Rentals received from buildings of the company	68,706.73
From dividends, interest and premiums on stock	5,591.53
Total gross income	$1,023,870.20

The expenditures, as stated in said stipulation of the parties, were made for the following purposes:

Paid out for labor, salaries, wages, ordinary repairs, etc.	$257,867.38
For advertising, traveling expenses, telephone service, stationery, fuel, postage, worthless accounts, etc	66,191.65
Taxes	22,671.25
Rents paid by the company for leased ground	7,200.00
Premiums on policies of insurance	12,836.00
Paid for live stock injured or lost	1,292.77
Paid out of earnings for maintenance, improvements, betterments, etc., as per exact details in said stipulation	169,584.65
Total disbursements, as per stipulation	$537,643.70

1987 Thus it will be seen that the net income of the stock yards company, defendant in these suits, for the year 1896, amounted to the sum of $486,226.50. Out of this the company paid a dividend of $429,160.50, leaving a surplus after paying such dividend, from the operations of the stock yards for the year 1896, the sum of

$57,066.00. This sum, added to the surplus on hand from previous years' operations of the yards, left the company a surplus at the end of 1896 of $188,647.88, which is represented by cash in the hands of the company or in bank at the end of said year.

The net income of the stock yards company for the year 1896, stated in detail (the cost of operation and maintenance being calculated upon the rate per cent. heretofore stated, of disbursements as per the stipulations of the parties, at 52.51 % of the gross income) is shown by the following tables:

TABLE No. 1.

Yardage.	Gross income.	Rate per cent. of cost of operation and maintenance as per stipulation, 52.51 %.	Net income.
Cattle..... 1,619,368 @ 26c..	$404,840.75	$212,581.89	$192,258.86
Calves..... 95,634 @ 10c..	9,563.40	5,021.74	4,541.66
Hogs..... 2,594,465 @ 8c..	207,557.20	108,988.29	98,568.91
Sheep..... 873,934 @ 5c..	43,696.70	22,945.13	20,751.57
Totals..... 5,183,401	$665,658.05	$349,537.05	$316,121.00

The following table shows what would have been the net income of the stock yards company from yardage, in 1896, if the rates fixed by the terms of the act approved March 3, 1897, had been in force during that time:

TABLE No. 2.

Yardage.	Gross income.	Operation and maintenance same as in table No. 1.	Net income
Cattle..... 1,619,368 @ 15c..	$242,904.45	$212,581.89	$30,322.56
Calves..... 95,634 @ 8c..	7,650.72	5,021.74	2,628.98
Hogs..... 2,594,465 @ 6c..	155,667.90	108,988.29	46,679.61
Sheep..... 873,934 @ 4c..	34,957.36	22,945.13	12,012.23
Totals..... 5,183,401	$441,180.43	$349,537.05	$91,643.38

The reduction in gross and net income by the statute is $224,477.62.
The rate per cent. of total reduction to previous total income is 33.72% of the gross income and 71.01 % of the net income.
The rate per cent. of reduction of net income on cattle is 84.22.
The rate per cent. of reduction of net income on calves is 42.12.
The rate per cent. of reduction on net income from hogs is 52.63.
The rate per cent. of reduction on net income from sheep is 42.11.

The following table shows the gross income, cost of operation, and maintenance and net income from the sale of feed at the yards in 1896:

TABLE No. 3.

Feed.	Gross income.	Rate % of operation and cost of maintenance as per stipulation, 52.51%.	Net income.
Amount received for feed (less cost) served to cattle, hogs, calves and sheep	$150,432.54	$78,992.13	$71,440.41
Amount received for feed in horse and mule department (less cost)	27,385.59	14,380.17	13,005.42
Amount received for feed in Gould barn (less cost)	10,176.56	5,343.71	4,832.85
Total	$187,994.69	$98,716.01	$89,278.68

1988 The following table shows what would have been the result upon the business of the stock yards company in 1896 in its transactions in feed, if the rates provided for by the act approved March 3, 1897, had prevailed in that year, the selling price being fixed at 100% advance over cost:

TABLE No. 4.

Feed.	Gross income.	Cost of operation and maintenance the same as in table No. 3.	Net income.
Amount received for feed served to cattle, calves, hogs and sheep (less cost of feed)	$74,258.34	$78,992.13	Deficit, $4,733.79
Amount received for feed in horse and mule department (less cost of feed)	27,385.59	14,380.17	13,005.42
Amount received for feed in Gould barn (less cost of feed)	6,104.27	5,343.71	760.56
Totals	$107,748.20	$98,716.01	$9,032.19

Remarks.

It appears from this table that the rate per cent. of diminution of income from feed by the application of the act is as follows:

On net income from the sale of feed outside of horse and mule department and Gould barn, 106.6%.

On net income from horse and mule department, no change whatever; the income and expenditures remain the same, for the reason that in 1896 the rate per cent. of profit was less than one hundred per cent.

On net income from Gould barn, the per cent. of reduction is 84.27%.

The total amount of the reduction is $80,246.49, which is a rate per cent. of 89.88%.

The following table summarizes the results shown in tables 1, 2, 3, and 4, and presents the actual result to the income of the company from feed and yardage of the application of the act approved March 3, 1897, to the business of 1896:

TABLE No. 5.

Yardage.	Net income in 1896. Table- Nos. 1 and 3.	Net income under act. Tables Nos. 1 and 4.	Amount of reduction. Tables Nos. 2 and 4.	Rate % of reduction. Tables Nos. 2 and 4.
Cattle	$192,258.86	$30,322.56	$161,936.30	84.22
Calves	4,541.66	2,628.98	1,912.68	42.12
Hogs	98,568.91	46,679.61	51,889.30	52.63
Sheep	20,751.57	12,012.23	8,739.34	42.11
Totals	$316,121.00	$91,643.38	$224,477.62	71.01%
Feed.				
Served to cattle, calves, hogs and sheep	$71,440.41	Def. $4,733.79	$76,174.20	106.6
Served in H. & M. department	13,005.42	13,005.42	No change.	None.
Served in Gould barn	3,832.85	760.56	4,072.29	84.27%
Totals	$89,278.68	$9,032.19	$80,246.49	89.88
Grand totals	$405,399.68	$100,675.57	$304,724.11	75.16

Remarks.

The amount of gross income received by the stock yards company in 1896 from sources unaffected by the statute of March 3, 1897, mentioned in the bills herein, was $170,217.46. Deducting from this sum its proportion of operating expense and cost of maintenance, 52.51%, the result is the amount of net income received by the company from sources unaffected by the act, to wit: $80,826.82. If this be reduced by the average reduction produced by the act on the items it affects, it would be $20,077.38. And the total net income would have been $120,752.95.

The result reached as to the amount of the net income of the stock yards company, in the remarks to table No. 5, may be ascer-
1989 tained by another method. The proportion may be stated as follows: The net income from feed and yardage in 1896 is to the net income produced by the act in question, as the net income from all of the business of the company in 1896 is to the net income produced by the application of the rates prescribed by the new act. Or, we can take such a proportion of the gross investment in all of the property of the stock yards company, as the present earnings from feed and yardage bears to the entire earnings of the company, as they existed prior to the enactment of the act.

As the gross investment (or real value of the plant) is the subject of dispute, the other proportion, which produces precisely the same result, may be stated as follows:

Net income 1896 from feed and yardage.	Net income under new act from feed and yardage.	Total net 1896.	Net income under new act.
$405,399.68	$100,675.57	$486,226.50	$120,752.95

Proving this proportion by multiplying the extremes together and doing the same for the means, we find that it is correct.

Since the total net income of the company under the new act may thus be assumed to be $120,752.95, this sum is considered in the next table with reference to the value of the real and personal property of the company, as found hereafter, and also with reference to such tangible property assembled together in a completed structure or whole, and considered in connection with the value of all the property, tangible and intangible, owned and used by the stock yards company in producing such revenue.

TABLE No. 6.

	Value of property.	Annual net income.	Rate per cent.
1. Real and personal property used exclusively for stock-yards purposes	$5,388,000	$120,752.95	2.24
2. Outstanding capital stock at par	7,366,000	Same.	1.64
3. Real and personal property of every description, and all intangible property, good will, franchises, etc., calculating market value of stock at $115, and deducting $600,000 for outside property	7,873,200	Same.	1.53
4. Real and personal property and good will, estimated at $780,000	6,168,000	Same.	1.94
Same estimated as in No. 3, except that market value of stock is calculated at $132, and $600,000 is deducted for outside holdings	9,115,000	Same.	1.32
Same as last, except estimating market value of stock at $125	8,610,000	Same.	1.40
No. 1. Adding to the foregoing value of cash (surplus) $188,000	5,546,000	Same.	2.17
Value according to the complainant's witnesses, improvements valued at $1,480,000	6,757,000	Same.	1.77
Value according to the average of all of the testimony on values of all of the witnesses, and adding thereto the improvements, valued at $1,480,000	5,869,000	Same.	2.05
Same as previous estimate, but adding thereto the surplus on hand at the close of business in 1896, $188,000	6,057,000	Same.	1.99

Remarks.

If the earnings under the new act, as stated in this table and as previously found, be capitalized at six per cent. and the value of the property thus estimated, it will be found that all of the property of the company as operated under the provisions of the alleged statute would only produce six per centum, net, per annum, on $2,012,566.00, which would, according to accepted business rulings, be the value of such property.

And for that in the last paragraph of said findings the special master again asserts the right to utterly ignore the formal stipulation and agreement of the parties to these suits with reference to the disbursements of The Kansas City Stock Yards Company, defendant herein, during the year 1896 for operation, cost of maintenance and extension of improvements; whereas the said master should have either omitted the last paragraph from said finding, or should have reported to this court that the subject of disbursement for operation, cost of maintenance and extension of improvements was fully covered in the formal stipulation and agreement of the parties to these suits, now on file in this court, and should have made such formal stipulation and agreement a part of his said report by reference.

And for that in the last paragraph of said findings the special master again asserts the right to utterly ignore the formal stipulation and agreement of the parties to these suits with reference to the disbursements of The Kansas City Stock Yards Company, defendant herein, during the year 1896 for operation, cost of maintenance, and extension of improvements; whereas the said master should have either omitted the last paragraph in said finding or should have reported to this court that the subject of disbursements for operation, cost of maintenance, and extension of improvements was fully covered in the formal stipulation and agreement of the parties to these suits, now on file in this court, and should have made such formal stipulation and agreement a part of this said report by reference.

Seventeenth Exception.

For that the master, in finding No. 36 of his report, on page 20 thereof, has attempted to convey to this court the idea that many shippers of live stock purchase feed and feed their live stock before it reaches the Kansas City stock yards, in order to avoid the payment of charges by the company, which they believe to be unreasonable; whereas the finding so made by the special master is unsupported by any competent testimony in the record; and whereas said finding is misleading and is intended to present an argument, and does not respond to any question submitted to the master by the order of reference hereinbefore mentioned.

Eighteenth Exception.

For that the master, in finding No. 37 of his report, on pages 20 and 21 thereof, has attempted to report to this court the expenditures of The Kansas City Stock Yards Company, defendant herein, for the first five months of 1897, and has omitted from his finding in that regard the facts set forth at length in the formal stipulation and agreement of the parties with reference to such subject, heretofore on file with said special master and now on file in this
1991 court; whereas the special master, in addition to the facts stated in the first paragraph of such finding, should have

referred to this court the formal stipulation and agreement of the parties with reference to this subject, which said stipulation and agreement is as follows, to wit:

True copy.

There was actually expended by the Kansas City Stock Yards Company during the first five months of the year 1897, for the following purposes, the sum of..		$217,324.08
For operating expenses, including labor, cleaning yards, office expenses, insurance, taxes, lost and damaged stock, and similar items.....		$151,102.24
For cost of maintenance, including the following items:		
Two toilet-rooms in Exchange building...	$1,270.40	
One dynamo for power plant.....	552.80	
Changes in horse stable (Gould's).....	42.53	
One office for commission merchant in large horse barn.....	250.27	
Construction of two mule barns (No. 3)...	19,723.51	
Painting one hay barn.....	41.03	
Addition to horse shed to increase its capacity.....	248.72	
Subdividing and changing pens in quarantine yards.....	1,025.33	
Drainage for mule barns (No. 3 above referred to).....	462.62	
Office furniture.....	6.50	
Horses purchased for company's use.....	171.00	
Paving around mule barns (No. 3 above referred to)	1,698.66	
Same	453.65	
Labor on switch (railroad tracks).....	25.00	
Viaduct, quarantine yards.....	3,012.54	
Two approaches to viaducts in main yards.	1,053.19	
Wagons and carts bought for company's use....	165.00	
Water supply for mule barns No. 3.....	149.32	
Riprapping river bank, main yards, to protect it from encroachments by river....	869.77	
Also $35,000, being the amount paid by said company for land deeded to the Schwarzschild & Sulzberger Company in consideration of the immediate expenditure by said packing establishment of the sum of at least $100,000 in the enlargement of its plant sufficiently		

to consume about two thousand head of cattle more per week than it had theretofore consumed	35,000.00	
		66,221.84
Aggregate		$217,324.08

(On back of said sheet:)

L. C. BOYLE,
Attorney General.
D. R. HITE,
Solicitor for Complainant.

And for that the last half of said finding is impertinent and misleading and is not based upon any evidence in the record, nor does it pretend to be, the special master in said finding admitting that there is no evidence of the sources from which any increased income would be derived for 1897; whereas the special master should have refrained from attempting to mislead this court with reference to the income and expenditures of The Kansas City Stock Yards Company, defendant herein, for the year 1897, except as the same might be inferred from the formal stipulation and agreement of the parties heretofore referred to, on file with said special master, and now on file in this court.

1992 *Nineteenth Exception.*

For that the master, in finding No. 39 of his report, on pages 21 and 22 thereof, while he states that because of the expense of transportation "from Kansas City there (meaning Chicago) and the loss in weight by shrinkage, the live stock shipped to and sold in Kansas City in 1896 realized for its owners more than one and one-half million dollars in excess of the amount which would have been realized if forwarded from Kansas City to and sold on the Chicago market," he omits to state that if the live stock shipped from the State of Kansas to and sold on the Kansas City stock-yards market during 1896 had been by the owners thereof shipped to Chicago and sold there, such owners would have realized from the sale of such live stock during such time about $1,600,000 less than they actually did realize by selling such live stock at the market afforded at the Kansas City stock yards by The Kansas City Stock Yards Company, defendant herein.

(The complainants present here and rely upon the uncontradicted evidence of H. P. Child, on pages 39 and 40 of the record, and also upon the testimony referred to in exception No. 3 to finding No. 3.)

Twentieth Exception.

For that the master, in finding No. 40 of his report, on pages 22 and 23 (beginning after the word "incorporated," and with the word "however"), presents to this court a criticism of the management of The Kansas City Stock Yards Company, defendant herein, wholly unwarranted by any testimony introduced before him or

any fair inference therefrom, and in such part of said finding, criticises the expenditures by said company in the purchase of the seven small tracts of land designated on Exhibit Z as small "*e*," and in such part of such finding criticises the expenditures by the Kansas City Stock Yards Company for lands and improvements in the horse and mule department of said stock yards; whereas the master should have reported to this court the fact, disclosed by the uncontradicted testimony adduced before him, that the purchases by said company of the seven small tracts, marked "*e*" on Exhibit Z, was, in the opinion of those who are most competent to judge, a wise provision for the establishment of closer business connections with the largest patron of the Kansas City stock yards, and for the purpose of establishing more expeditious facilities for the rapid and convenient handling of stock received at said stock yards over the Union Pacific and Missouri Pacific railroads. And whereas the master should have reported to this court the fact disclosed by the undisputed testimony, that the horse and mule department of the Kansas City stock yards was an absolutely essential part of said business from the necessities of stock raisers and from the necessities of competition with other stock-yards.

1993

And for that the master, in such part of said finding, criticises unfairly and without any evidence in support thereof, the capacity of the horse and mule department of the Kansas City stock yards; whereas the master should have reported to this court that a capacity of four thousand head of horses and mules per day is not a capacity for the care of that number of animals kept more than one day; and whereas the master should have reported upon the evidence that each animal cared for and kept in the horse and mule department remained in such department an average of about four days, and that such fact necessitated a maximum capacity of four times the maximum daily receipt of 797 horses and mules, or a capacity of about 3,188 in one day, being equivalent to 797 animals received each day for four days and each remaining four days; and whereas the master should have reported on the evidence that the live stock other than horses and mules received at the Kansas City stock yards remain in said yards an average of less than one day.

(The complainants present here and rely upon the evidence referred to in exception 14 to finding No. 33½, with reference to the propriety of the purchases of the seven small tracts designated by the letter small "*e*" on Exhibit Z.

The complainants also present here and rely upon the statement made by the special master in finding No. 34 to the effect that the gross income from feed served to the horses and mules in said horse and mule department was $57,225.44, being an average of more than one dollar per head for such horses and mules.)

Twenty-first Exception.

For that the master, in finding No. 41 of his report, on pages 23 and 24 thereof, while stating in said finding certain parcels of property, real and personal, owned by The Kansas City Stock Yards

Company, defendant herein, which are not used for stock-yards purposes, erroneously and without any warrant therefor in
1994 the evidence, includes in his schedule of such property not used for stock-yards purposes, a certain tract of land, shown on Exhibit Z as a part of the Graham tract, cut by James street, of the present value of about $50,000; whereas the special master should have found that by reason of the fact that this strip of land is used for the purpose of upholding the superstructure of a stock viaduct leading to the Armour Packing Company's plant in that vicinity, that it was a necessary and essential part of the stock yards and a valuable and important connection between The Kansas City Stock Yards Company, defendant herein, and the Armour Packing Company.

And for that the master in said finding also reports to this court that 8.028 acres on the west side of the Kansas river, designated on Exhibit Z as "D," is not used for stock-yards purposes; whereas the master should have reported that such tract, of the present value of about $45,000, is used daily by the stock yards company as a dumping ground for the disposal of offal and other refuse matter from the quarantine yards, the testimony given before the master plainly showing that it was necessary for this defendant company to have such special dumping grounds to dump refuse from infected or quarantine stock kept in yards adjacent to this dumping ground, and that the defendant company, under the Government regulations pertaining thereto, would not be permitted to use a common dumping ground whereon would be dumped refuse from such quarantine yards.

And for that the master in said finding reports to this court that 12.122 acres, lying west of the property designated by the master in his report as "E" on Exhibit Z, is not and was not used by the defendant company for stock-yards purposes; whereas the master should have reported to the court that a large part of said tract is daily used by the defendant company as a dumping ground, and that such parcel of land was absolutely essential to the economical operation of the yards, and that if such a parcel of land had not been provided, the annual expense of having the refuse from the main and other yards, lying on the east side of the Kansas river, disposed of would have been approximately $8,000, and that this annual expenditure is saved to the defendant company by having this parcel of land and using it for such purpose.

And for that the special master in said finding reports that
1995 the seven small tracts north of the property, described in Exhibit Z as "E" are not used for stock-yards purposes; whereas the master should have reported that these tracts of land, of the present value of about $85,000, were purchased by the defendant company for the purpose of rounding out the north yards, in order to make connections with the packing-house establishments and railroads more particularly described in the evidence referred to in exceptions No. —.

And for that the master in said finding has reported to this court that railroad live-stock cars owned by the stock yards company,

defendant herein, of the value of $8,000, are not used for stock-yards purposes; whereas the master should have reported that such cars were not used at present, but that they were owned by the defendant company and in fit condition to be used at any time upon the tracks of the company in its yards, and whenever such use might become necessary by reason of any exigency of the business.

And for that the master reports in said finding that cash and credits to the amount of about $400,000 are not used by the stock yards company, defendant herein, for stock-yards purposes, thereby intending to convey to this court the idea that the result of the stock yards company's operations during the year 1896 was the accumulation of surplus of cash and credits of about $400,000; whereas the master should have reported to this court that the net surplus on hand in cash by the company on the first of January, 1897, was $188,000, and that said surplus was the accumulation of the excess of gross earnings over disbursements for a period of years, and that is was necessary for The Kansas City Stock Yards Company, defendant herein, to have on hand considerable cash at all times to properly carry on its business.

And for that the master in said finding has stated to this court that the value of all such real and personal property mentioned in said finding not used for stock-yards purposes is and was about $1,200,000; whereas the master should have reported to this court that the value of all the property owned by the defendant herein not used for stock-yards purposes was $505,425.

And for that the master in said finding has omitted to report to this court an item of property owned by The Kansas City Stock Yards Company, defendant herein, referred to in the testimony given before him, and not used for stock-yards purposes, to wit:
about $60,000 interest in certain stock yards in Salt Lake City;
1996 whereas the master should have reported to this court the fact, as shown by the testimony, that this $60,000 interest in said Salt Lake City property was not at any time asserted by The Kansas City Stock Yards Company, defendant herein, as being a part of the property used for stock-yards purposes at Kansas City, Kansas, and Kansas City, Missouri; and thus the total amount and value of property owned by The Kansas City Stock Yards Company, defendant herein, and not used for stock-yards purposes, should have been stated by the special master at $565,425.

Twenty-second Exception

For that the master, in finding No. 42 of his report, on pages 24 and 25 thereof, attempts to support the validity of the act of March 3, 1897, therein referred to, and the title thereof, upon oral and other wholly incompetent testimony, which was received by him over the objections and subject to the exceptions of the complainants herein; whereas the master should have reported, if anything upon this subject, only what the legislative journals of the house and senate of the State of Kansas for 1897 contain concerning said so-

called act and the enrolled bill thereof, as such legislative journal and the enrolled bill import absolute verity and are conclusive proof as to whether said act passed the legislature, when it passed how it passed, and whether it is valid or not.

And for that the master, in said finding, has attempted to pass upon and decide the validity of said act of March 3, 1897, and the title thereof, as a conclusion of law; whereas the master should have reported, if anything on said subject, only what the enrolled bill contained and what the contents are of the legislative journals of the State of Kansas for 1897, concerning said so called act and the title thereof.

And for that the master, in said finding, has made conclusions of fact wholly unsupported by any relevant or competent evidence whereas he should have merely referred to the enrolled bill of said so-called act and the contents of the legislative journals of the house and senate of the State of Kansas fo 1897 concerning said act and the title thereof.

(The complainants, in support of this exception, rely on pages 53, 54, 55, 70, 71, 81, 88, 310, 317, 318, 324, 325, 329, 330, 331, 338, 687, 709, 715, 716, 723, 729, 760, 763, 785, 786, 790, 791, 803, 804, 916 1997 and 923 of the printed journal of the house of representatives of the State of Kansas for the session of 1897, showing the action of said house of representatives incident to the consideration of house bill No. 87, and the substitute thereon, No. 87, entitled "An act to regulate stock yards and providing punishment for the violation thereof;" and the contents of said journal on pages 790 and 791, showing that the title was agreed to as "An act to regulate stock yards and providing punishment for a violation of this act," as passed by the house on March 1, 1897; and also pages 771, 779, 793, 794, and 797 of the journal of the senate of the State of Kansas for the session of 1897, showing the action of the senate incident to the consideration and passage of a substitute for house bill No. 87, entitled "An act to regulate stock yards and providing punishment for the violation thereof," and also showing that the title of the said act as agreed to on March 2, 1897, was "An act to regulate stock yards and providing punishment for the violation thereof;" and also the contents of said printed journals of the said house and said senate for 1897, showing that the so-called act of March 3, 1897, never passed the houses of the legislature of the State of Kansas with the title which is now affixed to the enrolled bill and which appears in the act as published in the session laws of 1897.

The complainants also rely, to sustain their exceptions to this finding, upon their objections and exceptions to irrelevant and incomptent testimony, oral and documentary, introduced upon the part of the attorney general, to contradict the recitals in said house and senate journals of 1897, concerning the title and passage of said act heretofore referred to, viz: Record pages 1130, 1131, 1132, 1133, 1148, 1149, 1150, 1151, 1152, 1153 and 1154.)

Exception Twenty-three.

For that the master in finding No. 43 of his report, on page 25 thereof, has reported to this court his estimate of the value of the land owned and used by The Kansas City Stock Yards Company, defendant herein, at the time of the passage of the so called act, approved March 3, 1897, divested of all improvements, but considering all adventitious advantages accruing to it from its location and environment, and said master states his estimate of the value of such land so considered at $3,600,626 only; whereas the master should have reported to this court in response to the question submitted to him in the order of reference hereinbefore mentioned the value of the property of the Kansas City Stock Yards Company at the time of the passage of the so-called act, approved March 3, 1897, as a completed plant or system, considered as an entirety, including the franchises, good will and privileges of said company as a going concern, with all of the connections already made and then and now existing between such completed plant and system and the several common carriers of railroads described by said master in finding No. 28, having connections, terminals and switches in and about the said completed plant and system and with and between the several beef and pork packing establishments mentioned by said master in finding No. 5, connecting with and adjoining said completed plant and system, and also considered with reference to the contracts, franchises and connections of said Kansas City Stock Yards Company, defendant herein, with such railroads, packing establishments, exporters and buyers of live stock at that time engaged as dealers in the purchase and sale of live stock at the Kansas City stock yards.

1998

And for that said master has reported the value of such land so used at said sum of $3,600,626; whereas the only competent evidence introduced at the hearing before said master, concerning the value of such land for stock-yards purposes, conclusively established the value of such land for such purposes at more than $6,000,000; whereas the master should have reported to this court the value of such land for the best purpose for which it was adapted, and especially for which it was at the time of the commencement of these suits and ever since has been applied.

And for that the said master in said finding, in reaching the estimate set out in said finding wholly ignores the undisputed testimony presented at the hearing before him, that the land described in said finding was specially adapted by reason of its location, improvements, connections and topographical conditions for the carrying on of the business for which The Kansas City Stock Yards Company, defendant herein, was incorporated, and for which said purposes the land had been for many years occupied and used by said defendant; whereas the master should have reported to this court the actual market value and selling price of said land for stock-yards purposes.

And for that said master in reaching the estimate set out
1999 by him in said finding failed to give any weight to the undisputed testimony given before him at the hearing, concerning the injustice and unfairness of segregating the parts of the completed system of stock yards and placing any value on such segregated parts; whereas the said master, in reaching an estimate responsive to the question submitted to him by the order of reference hereinbefore mentioned, should have determined the question of value from the evidence given before him to the effect that the property of The Kansas City Stock Yards Company, defendant herein, should be regarded in the aggregate as a unit, an entirety, as a plant designed for a specific object, and that its value should be estimated not in parts but taken as a whole.

And for that said master in reaching the conclusion stated by him in said finding, as to the value of said naked land, did not determine such question according to the preponderance of the testimony given before him at the hearing, although said master reports to this court in said finding as follows: "The evidence of opposing witnesses (was) of apparently equal intelligence, fairness and means of information;" whereas the great preponderance of the testimony given before said master, even as to the actual market value and selling price of said land described by him in said finding, divested of all improvements, was the sum of $5,277,213.00.

And for that said master in said finding, in reaching his estimate of the value of the naked land owned, occupied and used by The Kansas City Stock Yards Company, defendant, for stock-yards purposes, has wholly omitted to describe or value a tract of land, shown on Exhibit Z as cut by James street, of the actual market value of about $65,000, and of a tract of land marked on Exhibit Z as "D," of the actual market value of about $41,000, and also of a tract of land shown on Exhibit Z as a part of "E," of the actual market value of more than $85,000, and also of seven small tracts of land, designated on Exhibit Z as "e," then of the actual market value of more than $85,000; whereas the said master should have reported to this court the actual market value of such property, as the testimony clearly shows that all of such tracts of land were used by said Kansas City Stock Yards Company, as essential parts of its system of stock yards, except the small tracts marked "e;" the uses for
which said small tracts were designed being more particu-
2000 larly set out in the twenty-first exception to finding No. 41 of said report.

And for that said master reports in said finding the value, divested of all improvements, of the main yards in Missouri, consisting of 41.708 acres, at $45,000 per acre, aggregating $1,876,860; whereas he should have reported the value of said last-mentioned tract, divested of all improvements, at not less than $58,600 per acre, aggregating $2,369,014, inasmuch as fourteen witnesses, whom the master in said finding states to be of "equal intelligence, fairness and means of information," testified respecting the value of such tract, divested of all improvements. The average deducible from the testimony of ten of such witnesses is $58,600 per acre, aggre-

gating $2,369,014. The master also reports in said finding the value, divested of all improvements, of the main yards in Kansas, consisting of 40.659 acres, at $30,000 per acre, aggregating $1,219,770; whereas he should have reported the value of said last-mentioned tract, divested of all improvements, at not less than $53,714 per acre, aggregating $2,183,968, inasmuch as thirteen witnesses, whom the master in said finding states to be of "equal intelligence, fairness and means of information," testified respecting the value of such tract, divested of all improvements.

The average deducible from the testimony of seven of such witnesses is $53,714 per acre, aggregating $2,183,968.

And for that the said master in said finding has reported to this court the value of the north yards, consisting of 14.9 acres at $23,000 per acre, aggregating $342,500; whereas he should have reported to this court the value of said tract known as the north yards, divested of all improvements, at not less than $37,768 per acre, aggregating $562,748, inasmuch as seventeen witnesses, whom the master in said finding states to be of "equal intelligence, fairness and means of information," testified respecting the value of such tract, divested of all improvements. The average deducible from the testimony of eleven of such witnesses is $37,768 per acre, aggregating $562,748.

And for that in said finding the said master states that the witnesses who testified concerning the value of such lands, divested of all improvements, had equal means of information, and in reaching the conclusions in said finding the said master gave greater weight to the testimony of the witnesses produced by the attorney
2001 general; whereas the testimony of E. F. Allen, W. S. Beard, R. E. Cable, E. S. Merrill, C. D. Parker, and C. W. Whitehead was wholly incompetent and immaterial and entitled to no weight whatever, for the reason that each and every one of said witnesses for the defendant, L. C. Boyle, attorney general, unequivocally admitted that they did not know the market value of such land or any of it for stock-yards purposes, or railroad purposes, or the purposes for which said land was then used and applied. Said witnesses all testified to the effect that they fixed the value of such land as naked acre property and without any regard to its use or adaptability for stock-yards purposes, railroad purposes, or any other specific purpose for which said land was peculiarly adapted and had been specially used.

(The complainants here present and rely upon the following testimony:

Testimony of C. F. Morse, that the reproduction of the plant at the present time would cost "anywhere from $8,000,000 to $10,000,000." Page 127.

Testimony of C. F. Morse, page 270:

"Q. Please state what, in your opinion, is the real value of the plant owned, used, operated and maintained by the Kansas City Stock Yards Company, upon the ground which has been testified to, say on the twelfth day of March, 1897, consisting of its connections and the use of it for stock-yards purposes?

A. I should place the value of the property in that way between nine and ten million dollars; nine and a half millions, I should say.

Q. Take the system and property of the Kansas City Stock Yards Company, and say what its market value would be as the property stood on the twelfth day of March, 1897, and as it now stands with all of the connections already made and existing as a going concern.

A. About nine and a half million dollars."

Testimony of C. F. Morse, pages 123, 124, 125:

"Q. What, then, do you make the total aggregation of the present value of the lands (without improvements) owned by the Kansas City Stock Yards Company?

A. $5,685,240."

N. B.—The context shows the witness was testifying concerning lands owned and used by the company for stock-yards purposes only.

Testimony of H. P. Childs, page 102:

The witness testified in effect that the value of the completed plant considered as a going concern was in the neighborhood of ten millions of dollars.

Testimony of George T. Williams, pages 445–450.

2002 This witness testified as follows:

"Q. Now, from your knowledge of the Kansas City stock yards, what, in your judgment, is the value of that property considered as a unit, an entirety, as a completed system of stock yards, and as a going concern, assuming the tangible property to be worth from five to seven million dollars?

A. The sale of the stock would give that result. I consider the plant or the tangible property at a great deal more than what it cost."

Further answer. "I should judge some three or four million dollars over its capital stock now. That is my opinion."

Testimony of D. McN. Palmer, pages 460–472:

"Q. Assume that the physical property, termed here as tangible property, of the Kansas City Stock Yards Company is worth from five to seven millions of dollars, please state from your knowledge of the business what, in your opinion, would be the real selling price of the property as an entirety, considered as a going concern with an established business.

A. I should say if the realty was of the value of five to seven million dollars, the plant would be worth nine to ten million dollars."

Testimony of W. N. Babcock, pages 486–494:

"Q. State what in your opinion, if you know, is the value at the present time of the plant of the Kansas City Stock Yards Company, considered as a unit, an entirety, as a system of stock yards and as a going concern, assuming that the value of the tangible property at the present time is from five to seven millions of dollars.

A. If the tangible property as a unit would be valued at from

five to seven million dollars, I would judge the value of the property to be at least 33⅓ per cent. more than that."

Testimony of J. W. Dalton, pages 547–549.
Testimony of J. W. Ferguson, pages 503–506.
Testimony of R. J. Hinton, pages 622–624.
Testimony of T. J. Haire, pages 663–666.
Testimony of Albert Marty, pages 722, 723.
Testimony of E. H. Phelps, pages 610–614.
Testimony of C. W. Schiller, pages 628–630.
Testimony of J. W. Tourtellot, pages 521–524.
Testimony of J. B. Welsh, pages 529–534.
Testimony of C. K. Wells, pages 558, 559.
Testimony of A. A. Whipple, pages 579–583.
Testimony of D. S. Young, pages 563–566.

The testimony of the last-named witnesses in the pages referred to fixes the value of the tracts of land referred to in said finding at the following prices per acre:

Testimony of Complainants' Witnesses as to Value of Real Estate.

	Main yards in Missouri, 41.708 acres.	Main yards in Kansas, 40.659 acres.	Quarantine yards, 13.458 acres.	North yards, 14.900 acres.
	Per acre.	*Per acre.*	*Per acre.*	*Per acre.*
J. W. Dalton	$62,500	$62,500	.....	$32,500
J. W. Ferguson	.....	.....	.....	55,000
R. J. Hinton	65,000	.....	.....	
T. J. Haire	62,500			40,000
A. Marty	50,000	50,000	.....	30,000
C. F. Morse	56,000	56,000	$12,000	40,000
E. H. Phelps	60,000	55,000	16,000	47,500
C. W. Schiller	.....	.....	.....	34,200
J. W. Tourtellot	55,000	.....	.....	30,000
J. B. Welsh	60,000	40,000	15,000	31,250
C. K. Wells	.....	.....	.....	25,000
A. A. Whipple	60,000	37,500	15,000	50,000
D. S. Young	55,000	75,000	16,500	
	$386,000	$376,000	$74,500	$415,450
Average	$58,600	$53,714	.....	$37,768

2003 *Exception Twenty-four.*

For that the said master, in finding No. 44 of his report, on page 25 thereof, reports to this court the actual value of the improvements wholly disconnected and apart from the lands of The Kansas City Stock Yards Company, defendant herein; whereas said master should have reported to this court in response to the question submitted to him by the order of reference hereinbefore mentioned, the value of the property of the Kansas City Stock Yards Company, including the improvements upon the lands, considered in the aggregate, as

a unit, an entirety, and as a plant designed for a specific object, and should have estimated such value of the property not in parts, but taken as a whole; and whereas the master should not have utterly ignored the unity of use of the property of the Kansas City Stock Yards Company as it was used by said company at the time of the passage of the alleged act, approved March 3, 1897.

Exception Twenty-five.

For that the master, in finding No. 45 of his report, on page 25 thereof, has reported to this court the value of the personal property of the Kansas City Stock Yards Company separate and apart from the other tangible property of said company; whereas the master should have stated to this court in response to the question submitted to him in the order of reference hereinbefore mentioned, the value of all of the property in the manner specifically recited in exception No. 24, which recital is by reference made a part of this exception as fully as if set out herein.

Exception Twenty-six.

For that the master, in finding No. 46 of his report, on page 26 thereof, has reported to this court as the total value of all the property owned and used by the Kansas City Stock Yards Company, the sum of $5,388,003.25, and the said master, in arriving at the conclusion in said finding, has valued the tangible property of said company separately; that is to say, he has valued the naked land, divested of all improvements, then valued the improvements separate and apart from the land, and then valued the personal property separate and apart from the improvements or land; whereas the master should have valued all of the property of the Kansas City Stock Yards Company, used for the purpose of its business, as a unit, taking into consideration the uses to which it is put
2004 and all the elements making up its aggregate value. And the valuation thereof ought not to have been confined to naked lands, improvements separate and apart therefrom, and personal property separate and apart from the improvements and lands, but the value of each part of said plant, if valued separately, should have included the proportionate part of the value resulting from the combination of the means by which the Kansas City Stock Yards Company's business was carried on, a value existing to an appreciable extent throughout the entire domain of its operation. (The complainants present here and rely upon the evidence referred to and collected under exception No. 23 to finding No. 43 of said report, and make the same a part hereof as fully as though set out herein.)

Exception Twenty-seven.

For that the master, in finding No. 47 of his report, on page 26 thereof, has reported to this court that it is impossible under the evidence to correctly value the good will or live business of the

stock yards company based upon the cost of reproduction, and that the estimates of the witnesses concerning such value were conjectural; whereas the master should have reported in response to the question submitted to him by the order of reference hereinbefore mentioned, the value of the plant or system of stock yards owned and operated by The Kansas City Stock Yards Company, defendant herein, in the manner more fully described in exception No. 25 to finding No. 46, which description and recital is referred to and made a part of this exception as fully as though set out herein; and whereas the testimony of the witnesses on this subject was clear and undisputed and conclusively established the value of the property considered as an entirety, a going concern, neither the competency nor credibility of such witnesses being in any manner whatever impeached by the testimony introduced on behalf of the attorney general, defendant herein.

And for that said master in said finding informs the court that the expenditures of the defendant company in establishing the business carried on by it had added materially to the value of the real estate and influenced in some degree the estimates placed thereon by the witnesses; whereas the report of the master upon the subject of values of real estate conclusively shows that the witnesses
2005 to whose testimony the master attached any weight whatever and the basis upon which the estimates of the master are made as to the value of such real estate, excluded any idea of the value of such property for stock yards purposes, or for its most available purpose, and said master in his report, in finding No. 43 thereof, plainly states that he estimates the value of the land, divested of all improvements and considered as naked property, and does not value it by reason of its special use, nor for stock-yards purposes, nor as a part of a completed plant or system of stock yards considered as an entirety, as a going concern.

The complainants present here and rely upon the following testimony:

Testimony of E. F. Allen, page 805:

"Q. Do you know the present value of the use of this land by the stock yards company?

A. What they are worth to the stock yards company?

Q. Yes, sir.

A. No, sir.

Q. In making your estimates of value, you were not influenced by the value of the use to which the lands were put by the company?

A. No, sir.

Q. Not at all?

A. No, sir."

Testimony of R. E. Cable, page 829:

"Q. Have you sold any real estate in the vicinity of that tract?

A. No, sir.

Q. Have you bought any?

A. No, sir.

Q. You have never had any transactions of buying or selling property around there?

A. No, sir."

N. B.—The testimony of this witness was received under the objections and exceptions of the complainants because not competent.

"Q. What, in your opinion, is that tract 'E' worth just as it is today?

A. For general purposes, or the purposes for which it is being used?

Q. For the purposes for which it is being used?

A. Certainly, I could not answer that question.

Q. You don't know?

A. No, sir."

The witness testifies with reference to all of the tracts, that he did not know the value of them for the purposes for which they were being used.

Testimony of W. S. Merrill, pages 749–751:

"Q. What is the land worth in this tract marked 'E,' concerning which you have testified, lying east of Water street, in its present condition, just as it stands today?

A. I don't know

Q. Then, as I understand your testimony, you are not testifying about the value of the property as it stands today, in its present condition?

A. Not improved property.

Q. You are not testifying about the value of the tract 'E' as it stands today?

A. Not improved property.

2006 Q. You can answer that question by yes or no. You are not testifying of the value of 'E' as it stands today?

A. No."

The witness did not testify as to the value of any property as it stands today.

On page 747 the witness says: "Now, I have put that price on the land, and say it is perfectly vacant, just as it was left by nature."

The witness further testified:

"Q. Now, then, in making up your value with reference to the tract marked 'E,' you consider that as naked acre property without any improvements, or without any business at all?

A. Yes, sir.

Q. That is the fact, is it?

A. Yes, sir."

The witness also testified, "If you are going to improve the property and its surroundings, that is an entirely different thing. I will work on it with you, but that is not cross-examination on values." Page 747.

Testimony of C. D. Parker, page 763:

"Q. You don't know anything about the value of the use of that land for stock-yards purposes?

A. No, sir.

Q. If another stock yards company should come in, do you think it could procure as desirable a location in the bottoms?

A. I don't think it could.

Q. Now state, if you can, what is the actual present value of the land for stock-yards purposes?

A. I don't know."

Testimony of C. W. Whitehead, page 841:

"Q. What is this property marked 'A,' 'B,' 'C,' 'D' and 'E' worth for stock-yards purposes?

A. I don't know.

Q. What is the value of this property for railroad purposes?

A. I don't know.

Q. What is the value of this property for packing-house purposes?

A. I don't know anything about the packing-house business.

Q. What would be the value of that property for packing-house purposes?

A. I have stated, I believe, that I don't know."

The complainants also rely upon the evidence referred to and collected under exception No. 23 hereof and make the said references a part of this exception as fully as though set out herein.)

Exception Twenty-eight.

For that the master, in finding No. 48 of his report, on pages 26 and 27 thereof, reports to this court that the evidence concerning the market value of the shares of the capital stock of The Kansas City Stock Yards Company, defendant herein, is far from satisfactory and convincing, and the said master omits to state in
2007 his report that within about two years prior to the passage of the so-called act, approved March 3, 1897, a *bona fide* offer was made to the management of the Kansas City Stock Yards Company of one hundred twenty-five ($125) dollars per share of the par value of one hundred ($100) dollars for all of the stock of said company as the purchase price of the entire plant or system of stock yards, and the master omits the information conveyed by the testimony taken before him that the market value of the shares of the capital stock of the defendant company, as shown by the market quotations thereof, during the year 1896 and up to February of 1897, was about one hundred thirty-five ($135) dollars per share of the par value of one hundred ($100) dollars.

And for that the master in said finding, without any support therefor in the testimony, attempts to diminish the value of the good will or going business of the property of The Kansas City Stock Yards Company, defendant herein, and states if there is such a thing as property partaking of the nature of good will or going business, that it is probably worth seven hundred eighty thousand ($780,000) dollars; whereas the master should have reported affirmatively to this court the value of the property of the Kansas City Stock Yards Company as an entirety, including in his finding in that regard the tangible and intangible property assembled together

as a unit or a completed system of stock yards; and whereas the testimony concerning the value of such a system or unit was clear and uncontradicted.

And for that the said master reports to this court several methods by which he suggests the value of the property of the defendant company can be determined; whereas the said master should have clearly and affirmatively reported to this court a definite answer to the question submitted to him in the order of reference hereinbefore mentioned, of the actual market value and selling price of the property of the Kansas City Stock Yards Company; and whereas the master should not have reported to the court the value of a part of such property and excluded from his consideration the value of the intangible property, concerning which the witnesses testify, whose testimony is collected in support of exception No. 23.

(The complainants present here and rely upon the following testimony:)

Testimony of C. F. Morse, pages 975, 976:

2008 "Q. What was the value of that stock (of the Kansas City Stock Yards Company), say, on March 12, 1897, and during the year 1896?

A. The sales of stock during 1896 were from 134 to as high as 141. They varied a little month by month.

Q. What would you say was the average market value of the stock during that period?

A. Well, in January, 1896, the market value was from 140 to 141. In March of the same year it was from 139½ to 140½; June, 135 to 137; July, 134 to 137; November, 132 to 135; January, 1897, the last figures of which I have any knowledge, 133 to 134. From then until March I have no quotations.

Q. Have you calculated what the average would be prior to March 12, 1897?

A. I think it would average somewhere about 136 to 137. I haven't made any exact figures, but the lowest mark was for a short time 132, about election time; but for the greater part of the time it was above 137.

Q. Do you know the market value during each of the times you have testified about?

A. Yes; I know of sales along from time to time.

By the MASTER:

Q. If that is true, then on the twelfth day of March the market value of the stock which had been issued by the company was 136 per share of $100?

A. I think that would have been true. Possibly not on the twelfth of March, but at any time for twelve months before the twelfth of February. There were no sales that I know of from February 1 to March 12. For twelve months prior to February 1 it ranged from 135 to 140, and I do not believe the stock could have been bought as an entirety for less than that, and according to the usual experience in such cases it would have cost more. That no

one would have sold any considerable amount for less than 136, I feel absolutely sure.

Q. You think the entire stock could have been sold at that rate at that time?

A. Yes, sir.

Q. And the entire plant could have been sold at that time for nine and a half millions?

A. Yes, sir. I will give you an instance why I think that that is so. A year or so before that time there was an effort made by parties who claimed to represent a foreign syndicate, who came here and made a careful investigation of the plant, of its capacity and the amount of business it was doing, and those gentlemen who were going to take charge were going to recommend the purchase of the plant at that time at $125 a share, as the price they could get the syndicate to pay. That was suggested, and I know of a great many stockholders who did not listen to it at all, so I gather from that that $125 a share would not have tempted them at all."

See also testimony of C. F. Morse, that the value of the entire plant or structure as a going concern of the Kansas City stock yards used for stock-yards purposes was over $9,500,000. Pages 276, 278, 318, 319 and 320.

2069–2031 *Exception to Certain Tables Filed with said Report.*

For that the said master has permitted certain tables to be attached to and filed with his report herein; whereas the said master should have wholly omitted such tables from his report, the contents thereof being immaterial, irrelevant, and impertinent to any question submitted to the master in the order of reference hereinbefore mentioned.

And for that the figures contained in said tables are misleading and not supported by any testimony given at the hearing before the special master; and for that the said figures and tables directly conflict with the written stipulation of the complainants and L. C. Boyle, attorney general, defendant herein, as to the cost of the operation, maintenance, and extensions of improvements heretofore referred to and now on file in this court.

WAGGENER, HORTON & ORR &
D. R. HITE,
Solicitors of the Complainants.

11, 9, '97.

Endorsed: # 7427, 7453. Cotting *et al. vs.* Stock Yards Co. *et al.* Complainants' exceptions to master's report. Filed Sep. 11, 1897. Geo. F. Sharitt, clerk.

2032 In the Circuit Court of the United States for the District of Kansas, First Division.

CHARLES U. COTTING, Complainant,
v.
KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants. } No. 7427. In Equity.

FRANCIS LEE HIGGINSON, Complainant,
v.
KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Def'ts. } No. 7453. In Equity.

} Causes Consolidated.

Opinion.

FOSTER, *J.:*

These cases are again before the court on the complainants' applications for a temporary injunction. In connection therewith the demurrers to the bills, the master's report, and exception thereto have been discussed by counsel. The chief question involved is the validity of the act of the legislature of March 3, 1897, regulating stock yards, fixing compensation for yarding, feeding, and watering live stock, and fixing a limit for the prices of feed, etc. This law is assailed by the complainants on several grounds: First, because its title was never adopted by the legislature; second, because the business of the stock yards company is interstate commerce and the law is inapplicable, and, third, because it deprives the complainants of a fair and reasonable return on their capital invested and is in violation of the fourteenth amendment to the constitution. I shall consider the several questions in the order stated.

Without reference to the oral testimony of members of the legislature as to what was done by that body in its proceedings touching this law and adopting this title, we find from the house journals that house bill No. 87, "An act to regulate stock yards and providing punishment for the violation thereof," was introduced on January 15, 1897, and referred to the committee on live stock. On February 3 the chairman of that committee reported the bill back to the house with a substitute. From that time forward this
2033 substitute is described in the journals as "substitute for house bill No. 87, an act to regulate stock yards and providing punishment for the violation thereof." This substitute was finally passed, and its title, as published, appears for the first and

only time in the journal in the report of the committee on enrolled bills. The engrossed and enrolled bills both bear the title as published. It seems that the title, wherever it is used in connection with house bill 87, was the title of the original bill and not of the substitute, and all that we know of the substitute or of its title is that it was a substitute for "house bill 87, an act to regulate stock yards," etc. The chief object of numbering bills is to identify them. There is nothing in the constitution or laws requiring the journals to disclose the title of any bill. All of the legislative proceedings could have been had on this substitute and its identity preserved by simply calling it substitute for house bill No. 87. When the title of this act does appear in the journals, it is in the words of the act as enrolled and published in the official paper and chapter 240 of the session laws. It seems to me this is sufficient.

Is this live stock, as transported by the railroad companies and handled by the Kansas City Stock Yards Company, the subject of interstate commerce? It appears from the evidence and the report of the master that the shipments of live stock received at these yards originate from various States and Territories. The following tabulated statement gives complete information of the sources and the numbers of stock received at the yards during the year 1896:

2634 *Origin of Stock by States and Territories.*

State or Territory.	Cattle.	Calves.	Hogs.	Sheep.	Horses and mules.	Total.
Kansas	863,430	33,133	1,625,848	294,997	32,188	2,849,596
Texas	217,257	19,036	12,842	145,555	45	394,735
Missouri	204,271	6,908	667,248	109,521	20,525	1,008,473
Indian Ty	188,918	20,247	68,375	2,994	27	280,511
Oklahoma	78,720	6,673	87,579	5,769	122	178,863
Colorado	44,746	2,737	582	90,866	782	139,715
New Mexico	35,876	2,988	494	88,941	.....	128,299
Nebraska	28,178	1,023	136,394	31,527	1,863	198,985
Iowa	11,451	2,651	232	49	590	14,973
Minnesota	9,909	2,879	42	.....	2	12,832
Old Mexico	6,512	.....	.....	3,120	.....	9,632
Utah	5,552	15	.....	162,531	176	168,274
Arkansas	4,327	984	5,143	4,117	1	14,572
Idaho	4,304	151	490	6,910	99	11,954
Arizona	2,808	.....	.....	32,638	65	36,511
Wyoming	2,077	252	.....	3,479	641	6,429
Oregon	1,410	1	.....	7,350	293	9,234
Illinois	694	11	.....	63	56	824
Montana	491	.....	.....	.....	91	582
California	293	.....	.....	225	29	547
Washington						
Alabama						
Georgia						
Louisiana						
Nevada						
South Dakota						
Tennessee						
Wisconsin	3,306	497	306	1,344	252	5,705
Total	1,714,532	100,166	2,605,575	993,126	54,847	5,471,246

It will be observed that of the 5,471,246 head of live stock received during that year Kansas furnished 2,849,596—more than one half of the whole number; Missouri furnished 1,008,473; Texas, 394,735; Nebraska, 198,985; Utah, 168,274; Colorado, 139,715; Indian Territory, 280,511; Oklahoma Territory, 178,863; New Mexico, 128,299, and other States and Territories lesser amounts. About sixty per cent. of the whole shipments were consigned to the Kansas City stock yards, and about forty per cent. were billed through to other markets, with the privilege of stopping over at Kansas City, testing the market there, and, if not satisfactory, they were to be shipped forward on the original bills. It resulted, however, as the master reports, that over ninety-five per cent. of all the stock received was disposed of at the Kansas City stock yards. There can be no doubt that all live stock shipped from other States than Kansas and Missouri to these yards is the subject of interstate commerce; nor can there be any doubt that shipments of stock originating in Kansas and Missouri and consigned to other
2035 States come under the same designation. Stock shipped from points in Kansas, consigned to the yards and sold there, would be local business. So it will be seen that a large proportion of the stock, by reason of the points of loading and the places to which it is consigned, enters upon the stream of interstate commerce; and, having become the subject of commerce, it remains such until it reaches its destination and is sold and mingled with the general mass of property of the State.

Brown *v.* Maryland, 12 Wheat., 419.
Leisey *v.* Hardin, 135 U. S., 108.

All interstate commerce and all instrumentalities of such commerce are under the control of Congress, and the State cannot regulate or tax them except in a limited respect. In a general sense, the failure of Congress to act is indicative that commerce between the States shall be free and untrammeled. Such matters, however, as appertain to the police power of the State and such as are merely aids or incidents to commerce, where Congress has not acted, are recognized as being within the limit of State authority.

Robbins *v.* Taxing District, 120 U. S., 489.
Bowman *v.* Chicago, etc., R'y Co., 125 U. S., 497.
Leisey *v.* Hardin, 135 U. S., 110.

It is contended that Congress has taken such action in the matter of the shipment and transportation of this live stock as would prohibit the State from passing the act in controversy, and stress is laid especially upon the interstate commerce act (24 Stat., 379). It will be observed that this act, by its terms, is confined to common carriers engaged in the transportation of persons and property by rail or water or both, and includes all instrumentalities of such shipment or carriage. It prohibits discrimination or preference in rates for like services; it prohibits a greater charge for transporting persons or property for a shorter than for a longer distance; it prohibits pooling of earnings between common carriers; it requires them to

publish their rates and fares for freight and passengers, and exacts a great many other requirements of common carriers. It further provides that "all charges made for services rendered or to be rendered in the transportation of passengers or property, as aforesaid, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just, and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful."

2036

This declaration by Congress that all charges shall be reasonable and just, if applicable to the stock yards company, has added nothing to the requirements of the law before that act was passed. It is merely a reiteration of the common law. It does not undertake to fix any specific price for any service rendered, and it cannot be said that the stock yards company is in any sense a common carrier. The master's report shows that the company neither owns, operates, nor uses any railway motive power or rolling stock. Sec. 8 of the act provides that any common carrier subject thereto who shall do, cause to be done, or permit to be done any act prohibited or declares to be unlawful, etc., shall be liable to the person injured for all damages sustained. This penalty, being aimed at and recoverable only from common carriers, makes it clear that the act was intended to apply to them alone. No one would think of suing this stock yards company under that section for excessive charges.

The law of Congress concerning the unloading of cattle during their shipment (secs. 4386, '7, '8, R. S.) is a humane provision, fixing a maximum period of twenty-eight hours for confining live stock without rest, food, or water. No one would question the necessity of unloading, feeding, watering, and resting their live stock, and the duty from a moral, if not from a financial, standpoint to do this act of humanity for these poor creatures was just as imperative before as after the passage of the law, but this requirement has not imposed any regulation which conflicts with the law of the State.

The act of Congress of May 29, 1884 (23 Stat., 31), to prevent the exportation of diseased cattle has been referred to. When this case was before this court for consideration upon an earlier hearing I had occasion to say that there was nothing in said act to conflict with the provisions of the act of the legislature. I see no reason for changing the views then expressed.

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Considerable stress has been laid in the argument by counsel for the complainants upon the act of Congress of March 3, 1891 (26 Stat., 1089), in reference to the inspection of cattle, sheep, and hogs. Sec. 3 of the act provides that the Secretary of Agriculture shall cause to be inspected prior to their slaughter all cattle, sheep, and hogs which are the subjects of interstate commerce and which are about to be slaughtered, and that the inspector shall stamp or label the carcasses, etc., approving or condemning them as fit or unfit for human food. Section 5 makes it unlawful for any person to transport or cause to be transported from any State or Territory into any other State or Territory any meat so condemned, etc. Under these acts of Congress for quarantine and inspection of cattle, sheep, and hogs the Secretary of Agriculture has established quarantine regulations

for cattle shipped from southern localities during certain months of the year, and has established a system of inspection of cattle, sheep, and hogs about to be slaughtered. These southern cattle are put in separate pens, and are under the direction, as to sanitary requirements, of the Government live-stock inspector. There is nothing in these laws or in the rules and regulations made thereunder that touches the matter of charges for yarding or feeding the stock or receiving of the same by the stock yards company in the regular course of business.

On this line of consideration the remaining question is this: Are these stock yards, as operated, such incidents to commerce only that the State may be permitted to fix the charges for the services performed and for the feed furnished for the stock? Of course, no act of the legislature can have an extraterritorial operation, and just what application the act would have to any particular transaction by reason of the yards being on both sides of the line between Kansas and Missouri or the details that may arise from the unique situation of the yards need not be anticipated, but the passing of this stock to and fro over the State line in the yards for convenience in feeding or handling does not of itself impress the traffic with the character of interstate commerce. We have to deal with the
2038 matter in a broader sense and speak of the subject of this act as a matter within the territorial jurisdiction of the State and in some degree the subject of commerce between the States. The evidence shows that the yards are chiefly in Kansas, and that more than one-half of all the stock is received and unloaded there. The yardage and feeding is mostly rendered before the stock is sold.

From the best consideration I have been able to give this subject, reasoning from analogy and applying principles announced in decided cases, I am of opinion that this stock yards company, performing duties for a mixed traffic, interstate and local, is such an incident to commerce as may be restricted in its charges by act of the legislature, in the absence of congressional action. This corporation has its existence under the laws of Kansas, and the law requires it to keep a general office for the transaction of business within the State, and the use of the property is one in which the public has an interest. The question presented here is essentially the same as in the cases of Munn *v.* Illinois, 94 U. S., 113; Budd *v.* New York, 143 U. S., 517; Brass *v.* Stoeser, 153 U. S., 391; see also State Taxes on Railway Receipts, 15 Wall., 293; Cooley *v.* Board of Wardens, 12 How., 299; Packet Co. *v.* Keokuk, 95 U. S., 80; Gloucester Ferry Co. *v.* Pennsylvania, 114 U. S., 196; Henderson Bridge Company *v.* Kentucky, 141 U. S., 679.

The next and last question to be considered is whether this act of the legislature violates the Constitution of the United States by taking the property of complainants without due process of law or depriving it of the equal protection of the laws. This is one of the material questions reserved from the hearing of these cases in April last. In the opinion of this court at that time the following language was used:

"The rule is well settled that any legislation fixing rates which

deprives a person or corporation of all compensation on capital invested is obnoxious to the Constitution, and the enforcement of such legislation will be enjoined by the courts."

Cotting *v.* K. C. S. Y. Co., 79 Fed. Rep., 683.
Regan *v.* Trust Co., 154 U. S., 362.
Turnpike Co. *v.* Sanford, 154 U. S., 578.

After citing Dow *v.* Beidelman, 125 U. S., 680; So. Pac. R'y Co. *v.* B'd of R'l'd Comm'rs, 78 Fed. Rep., 261; C. M. & St. P.
2039 R'y Co. *v.* Minnesota, 134 U. S., 418; Ames *v.* R'y Co., 64 Fed. Rep., 165; Gaslight Co. *v.* Memphis, 72 Fed. Rep., 952, the court, in this case, says:

"So it seems to be established by most recent interpretations of the Constitution that legislation which prevents a fair and reasonable return—the rights of the public considered—for capital engaged in legitimate business is obnoxious to the Constitution."

Cotting *v.* K. C. S. Y. Co., *supra*; Ames *v.* R'y Co., *supra*; Budd *v.* N. Y., *supra*; Banking Co. *v.* Smith, 128 U. S., 174.

So the question, briefly stated, is this: Does this act of the legislature deprive the complainants of a fair and reasonable return—the rights of the public considered—on their investment? In order to answer this question intelligently we have primarily to ascertain the amount or value of the capital invested and the probable return or income which will be realized under the rates fixed by the law. On this line of investigation the parties have introduced voluminous testimony before the master, and his report, after considering all the evidence, has condensed the matter to several findings of facts. It should not be assumed that courts in deciding this constitutional question can undertake to fix rates, but merely to decide whether the rates prescribed by the law are in violation of the complainants' constitutional rights.

It appears from the sixth finding of the master that the origin of the stock-yards business at Kansas City was as follows: In September, 1871, a corporation (known as the Kansas Stock Yards Company) was incorporated with a capital stock of $100,000. In February, 1875, this was increased to $200,000. In 1876 the company reorganized under the name of the Kansas City Stock Yards Company, with a capital stock of half a million dollars, and in July following received from the old corporation a conveyance of all its property. In November of the following year it increased its capital stock to a million dollars. On December 10, 1883, the company again reorganized, this time as the Kansas City Stock Yards Company, with a capital stock of two and a half million dollars, and on January 1, 1884, the new company received from its predecessor a deed of conveyance of all property owned by it for the expressed consideration of five dollars and the assumption by
2040 the grantee of all the debts, duties, and obligations of the grantor, and the new company issued to the stockholders of the old company certificates of stock of the aggregate par value of

about two million dollars, each stockholder receiving two shares for each share held by him in the old corporation. The stockholders in the two companies at said time were identical. The capital stock of the last-named company was increased in July, 1887, to five millions, and in February, 1894, to seven and one-half million dollars. On December 31, 1896, there had been issued and was outstanding stock of the par value of $7,368,650, of which $2,484,500 had been paid for in cash, and the balance had been issued to the stockholders by way of dividends at various times and for various purposes. It is explained that the action of the present corporation in issuing two shares of its stock for each share of its predecessor was based upon the fact that the value of the property had really doubled at the time of the transfer.

The master has made a detailed report of the different pieces and parcels of real estate owned by the defendant corporation—when acquired, cost of same, and also of the buildings, pens, and other improvements which have been constructed thereon, with the cost and present value thereof—and has reached the conclusion that at the present time the fair value of all the tangible property owned by the defendant and used for stock-yards purposes is $5,388,003.25. It is contended by the complainants that this is an unfair and illegal mode of reaching the value of the property; that it first destroys the plant as a living, going business, and then values its parts in detail. It is contended that the business or good will of the property should be considered, and the plant, as a whole, in operation
should be taken into account in fixing its value. On this
2041 line of estimation several of complainants' witnesses have
valued the property as high as ten million dollars. The evidence shows that for about fifteen years past the corporate stock of the defendant has been held at a premium of from ten to forty dollars a share. It must be admitted that the value of corporate property as represented by the stock will rise or fall in proportion to its power to make dividends, either present or prospective, and that, again, depends largely upon the rates which the corporation is permitted to charge for its services and property. It appears from the master's report that when the legislature was considering the passage of this law the capital stock dropped nearly to par, and that after its passage it was held at a figure not much above its par value. This fact demonstrates that the reason for its reaching a premium was because the company had been permitted to fix its own rates for yardage and feed without interference by the State. Now, assuming that the legislature may regulate these charges within reason, it would be absurd to say that a valuation of tangible and intangible property created and builded up to a premium on the assumption that the status would continue and the legislature would never exercise the power it possessed must be accepted by the State in fixing rates and charges. Mr Justice Brewer, in deciding the rule for valuing property for such legislation, after deferring to depreciation from original costs. Ames *vs.* Union Pacific R'y Co., 64 Fed., 165, says: "Nevertheless, the amount of money that has gone into the railroad property—the actual investment as expressed,

theoretically at least, by the amount of stock and bonds—is not to be ignored, even though such sum is far in excess of the present value." * * *

And then cites from the case of Regan *v.* Trust Co., 154 U. S., 412, as follows:

2042 "It is unnecessary to decide, and we do not wish to be understood as laying down as an absolute rule, that in every case a failure to produce some profit to those who have invested their money in the building of a road is conclusive that the tariff is unjust and unreasonable, and yet justice demands that every one should receive some compensation for the use of his money or property, if it be possible, without prejudice to the rights of others." * * *

The learned justice further says in that case:

"It is not always reasonable to cast the entire burden of the depreciation on those who have invested their money in railroads."

The converse of this proposition is equally true: If the investor may not bear all the burden of the depreciation he should not enjoy all the benefit of the appreciation. It does not appear that complainants paid anything beyond the par value for their stock. Under this view of the case neither the complainants nor the stock yards company can maintain a valuation on this property beyond the par value of the stock for the purpose of determining the reasonableness of the rates fixed by the legislature. Indeed, when we consider the amount of money actually paid by the stockholders—the amount of money they have invested in this enterprise and on which the constitution guarantees them a fair return—it is exceedingly doubtful if the value reported by the master is not the correct basis.

The following table exhibits in brief and graphic form the character and amount of the capital stock of the defendant company and its predecessors since their organizations, together with the percentage of profits declared and paid to stockholders in cash, in stock based upon earnings, and stock based upon increased value of real estate. The first column represents the actual cash paid by stockholders; the second, the dividends paid. The dividend in 1883, of $321,295, was composed of both cash and real estate. The third column represents the per cent. on the stock actually paid. The

2043 fourth represents stock dividends paid from earnings; the fifth, dividends based on increased valuation of lands. The sixth column represents the total capital stock issued; the seventh column the total dividends declared, and the last column the per cent. of profit.

2044

Year.	Stock paid for in cash.	Cash dividends.	Rate per cent.	Stock dividends on earnings.	Stock dividends on increased value of real estate.	Total capital stock.	Total dividends.	Rate per cent.
1871	$96,000					$96,000		
1872	96,000	$13,890	14.47			96,000	$13,890	14.47
1874	96,000	33,600	35.			96,000	33,600	35.
1875	96,000	16,800	17.50	$96,000		96,000	112,800	117.50
1876	160,000	9,600	5.68	66,300		192,000	75,900	39.53
1877	160,000	26,504	15.68	331,360		331,360	375,864	108.
1878	211,400	28,000	13.24	235,000		662,600	263,000	39.69
1879	211,400	21,150	10.		$40,000	980,000	61,150	6.24
1880	211,400					980,000		
1881	226,400	98,720	43.60			980,000	98,720	10.07
1882	226,400	99,480	43.89			995,000	99,480	10.
1883	226,400	321,295	142.30			995,000	321,295	32.29
1884	226,400	119,491	52.73		995,000	1,990,000	1,114,491	55.99
1885	226,400	149,250	65 92			1,990,000	149,250	7.50
1886	226,400	119,400	52.73			1,990,000	119,400	6.
1887	761,400	150,600	19 77	456,933		1,990,000	607,533	30.53
1888	761,400	282,800	37 14		1,058,867	4,040,000	1,340,867	33.19
1889	761,400	323,200	42 44			4,040,000	323,200	8.
1890	762,300	323,200	42.39	404,000		4,040,000	727,200	18.
1891	762,300	311,143	40 81			4,444,900	311,143	7.
1892	762,300	370. 92	48.61			4,444,900	370,592	8.33
1893	817,400	296,694	36.29	500,000		4,944,900	796,694	16.11
1894	2,484, 00	451,133	18 15	268,100		5,080,000	719,233	14.39
1895	2,484,500	554,816	22 23			6,935,200	554,816	8.
1896	2,484,500	429,160	17.27	433,450		6,935,200	862,610	12.44
1897		110,558	4.45	78,090		7,368,650	188,648	2.56
	$2,484,500	$4,660,976		$2,309,173	$2,593,867	$7,368,650	$9,623,216	

2045 It appears that the company did not always divide its total net earnings among the stockholders in the form of cash dividends, but sometimes placed portions to construction account and surplus. Thus, in the year 1896, the gross earnings were $1,023,870.20; operating expenses, $368,059.05; net earnings, $655,811.15. Of this amount, $429,160.00 was taken for cash dividends, $169,584.65 for construction, and $57,066.50 was passed to surplus account. It will be observed that the total net earnings, not including the $168,584.65 as part of the operating expenses, would be about $8\frac{3}{100}$ % on all the capital stock issued. If, however, the sum placed to construction account be deducted from the earnings, the net amount would be $486,226.50, or about $6\frac{6}{10}$ % on the capital stock.

There has been much controversy over this item of $169,584.65, the complainants contending that it is properly chargeable against the earnings as operating expense or cost of maintenance, while the attorney general controverts this proposition. It appears that the company has not charged it to operating expenses, but to construction account. Referring to the items which make up the $169,584.65, the master reports as follows:

Extending and enlarging water and sewer mains, rendered necessary by reason of a re-arrangement of the system and structures	$6,342.49
New viaduct, chutes, and fences, brick paving, sheep sheds, completion of the power plant and of the new addition to Exchange building begun in 1885, new hay and grain barns and other buildings, all being original construction and extensions of improvements where there had been none before	109,481.56
Brick paving in pens and alleys, to replace worn-out plank flooring, this expenditure adding its cost to the value of the plant	38,002.64

It will be seen that the largest item in this account is clearly for an extension of the plant, and not for maintenance or repairs. In the operation of this plant there is a constant wear and tear
2046 and damage by the elements to all the buildings, pens, and appliances, which have to be restored from the earnings before the net profits are determined. Whether this be called operating expenses, cost of maintenance, or construction, matters but little so that it is a proper charge for maintaining and preserving the property; but under this account the company could not construct new and original improvements; it could reconstruct or repair buildings or other appliances to take the place of others worn out or impaired. Inasmuch as these repairs must vary from year to year, sometimes being large in amount and at other times small, it is necessary to reach something like a general average for the yearly expenditures. After a new pavement has once been constructed it will last many years with a trifling expense for repairs, hence the whole cost of such construction, even though it be in the line of maintenance, should not be charged up as an annual expense. The evidence shows that, aside from this item of $169,584.65 in controversy, there is already a charge of $32,251.95 against the earnings for repairs. The report of the master and the evidence shows that the total value of all buildings and other improvements of all kinds upon the land is about a million and a half of dollars. Of this sum, about a quarter of a million is in the brick Live Stock Exchange building, and probably as much more in brick stables, steel bridge over the Kansas river, riprapping, power plant, and other permanent structures of which the yearly expense of maintaining would be small; besides this, the vitrified-brick paving cost $175,000, leaving about $825,000 of improvements of a more perishable character. About one-half of this amount consists of wooden structures of various kinds, which are not subject to unusual wear and tear or depreciation, while the other half is subject to unusual wear and damage by coming in contact with live stock. The
2047 master has not reported what would be the average yearly expense of maintaining these improvements, and the testimony of the witnesses differs widely on the subject, but from the best judgment I can form from the testimony a yearly depreciation of 2% on the first class of improvements, 5% on the second class,

and 10% on the third class, making an aggregate of $75,400, would be reasonable.

The master in making up his valuation omitted two tracts of real estate containing, respectively, 8.028 and 12.122 acres, owned by the company, which were regarded by him as disconnected from the stock-yards business. The complainants contend that they should be included within the plant, and I think their contention may be acceded to in this matter. The master finds the value of this property to be $126,140, which, added to the valuation found by him, makes the sum of $5,614,143.

The master has applied the rates fixed by the statute in controversy to the business of the company for last year, and finds that the net income would have been reduced $300,651.70. The property produced a gross income of $1,023,870.20. Deducting the operating expenses, $335,537.10, and $75,400 for maintenance and repairs ($410,937.10), we have net earnings of $612,922.10. Under the statute it would be reduced $300,651.70, leaving net income of $312,481.40, a percentage of 4.24 on the stock at par and 5.67 on the value of the plant as found by the master, with the addition above noted. If we accept the latter valuation, the returns on the investment seem to be fair and reasonable. If we take the property at its stock value, it is a closer question. A cut of $300,651.70 on a net income of $612,933.10 is radical legislation. It may be too radical. The largest reduction is on cattle, the former charge being 25 cents per head, and under the law 15 cents per head is allowed.

The other reductions are not so great and the prices fixed
2048 for feed are liberal. It is a matter of common knowledge that a great deal of money during the last decade has sought investment in Government bonds and other high-class securities at interest as low as four per cent. per annum. The answer to this argument is evident. It is not the case of money invested in business, with the risks and uncertainties of trade. There are other matters worthy of consideration. In 1893 the company increased its rate on cattle from 20 to 25 cents per head. In view of the large earnings of the company at that time and the amount of cash actually invested, it is difficult to conceive of any good reason for this increase. There is about a million of dollars of property owned by the company which is not connected with the yards or used for stock-yards purposes. It appears from the report of the master that the total taxes paid by the company, both in Kansas and Missouri, in 1896 were $22,071.25.

It does not always follow that a decrease in rates results in a corresponding decrease in net earnings. Generally business under the stimulus of reduced rates increases in volume. I have but little in the way of precedent to guide my judgment in this matter. In the case of The Covington Turnpike Co. *v.* Sandford, 164 U. S., 596, the court, speaking of the income of the turnpike company, uses the following language:

"We could not say that the act was unconstitutional merely because the company (as was alleged and as the demurrer admitted) could not earn more than four cent. on its capital stock. It cannot

be said that a corporation is entitled as of right and without reference to the interest of the public to realize a given per cent. upon its capital stock."

While this question is not entirely free from doubt, I am not willing to say that the percentage of profit which will be realized upon this property under either of the valuations above referred to is so unfair and unjust as to make the law unconstitutional.

The application for temporary injunction is denied and the temporary restraining order revoked.

CASSIUS G. FOSTER, *Judge.*

2049 (Endorsed:) No. 7427, 7453. Cotting *vs.* K. C. S. Y. Co. Higginson *vs.* K. C. S. Y. Co. Opinion. Filed Oct. 4th, 1897. Geo. F. Sharitt, clerk.

2050 In the Circuit Court of the United States for the District of Kansas, First Division.

CHARLES U. COTTING, Complainant, *vs.* KANSAS CITY STOCK YARDS COMPANY, a Corporation, *et al.*, Defendants. } No. 7427.

FRANCIS LEE HIGGINSON, Complainant, *vs.* KANSAS CITY STOCK YARDS COMPANY, a Corporation, *et al.*, Defendants. } No. 7453.

} Consolidated Cases.

Order.

Now comes on for decision the applications of the complainants, heretofore argued and submitted for preliminary injunctions, as prayed for in the bills of complaint filed herein; and thereupon the parties appear, by their respective solicitors, and the court, having duly considered said applications, hands down and files its written opinion thereon; and thereupon, on the application of complainants, the further consideration of said applications is continued until Saturday, October 9th, 1897, at ten o'clock a. m. In the meantime it is ordered, adjudged, and decreed that the restraining orders heretofore issued shall continue in full force and effect to said time. It is also ordered that if the said complainants make any application to any United States circuit judge or to any United States circuit court of appeals in any matter concerning the said applications prior to October 9th instant, that full and sufficient notice thereof shall be given to L. C. Boyle, attorney general, of the time and place when such motion or application shall be made.

CASSIUS G. FOSTER.

Oct. 4th, 1897.

2051 (Endorsed:) No. 7427, 7453. Order. Filed Oct. 4th, 1897. Geo. F. Sharitt, clerk.

2052-2055 In the Circuit Court of the United States for the District of Kansas, First Division.

CHARLES U. COTTING, Complainant,
vs.
KANSAS CITY STOCK YARDS COMPANY and L. C. BOYLE, as Attorney General for the State of Kansas, *et al.*, Defendants. } No. 7427.

FRANCIS LEE HIGGINSON, Complainant,
vs.
KANSAS CITY STOCK YARDS COMPANY and L. C. BOYLE, as Attorney General for the State of Kansas, *et al.*, Defendants. } No. 7453.

Causes consolidated.

Decree.

On October 4, 1897, these causes come on for decision, upon the application of the complainants for a temporary injunction, upon the evidence, the master's report, the exceptions thereto, and the arguments of counsel heretofore made herein, the parties appearing, by their respective counsel and solicitors, as heretofore; and the court, being fully advised in the premises, doth announce and file a written opinion herein (by Foster, district judge), which is hereby made part of the record, and thereon it is ordered and decreed by the court that the application made by each complainant for a temporary injunction be, and the same is hereby, denied and overruled, and the temporary restraining orders heretofore made and each of them are hereby continued to October 9, after which date said orders are revoked, cancelled, and held for naught; to which rulings and orders of the court and each of them the complainants and each of them duly excepted.

CASSIUS G. FOSTER, *Judge.*

Endorsed: No. 7427, 7453. Cotting *vs.* K. C. S. Y. Co. *et al.* Higginson *vs.* K. C. S. Y. Co. *et al.* Order. Filed Oct. 4, 1897. Geo. F. Sharitt, clerk.

2056 In the United States Circuit Court, District of Kansas.

CHARLES U. COTTING
vs.
L. C. BOYLE, Attorney General, ET AL.

FRANCIS LEE HIGGINSON
vs.
L. C. BOYLE, Attorney General, ET AL.

Cases consolidated.

Stipulation.

It is hereby stipulated by the parties hereto:
First. The defendant Boyle, as attorney general, admits that there

was no collusion between the complainant in the above-entitled suits and the defendant The Kansas City Stock Yards Company or any of its officers, directors or attorneys, solicitors or counsel, in respect to the bringing or prosecution of the said bills or either of them, and that the said bills were not, when the same were exhibited, and are not collusive to confer upon a court of the United States jurisdiction of the said causes.

Second. The defendants in the said bills shall, on or before the 13th of October, 1897, file their several answers responsive to the allegations of said bills, and on or before the 15th of October, 1897, the plaintiffs shall file replications to said answers.

Third. The testimony taken by the respective parties before George W. Clark, special master in these cases, upon the reference to him, upon the motions of the plaintiffs for injunction according to the prayer of said bills, together with the stipulations of the parties, the report of the said master, and all exhibits, be taken and read in evidence upon the hearing of said causes with the same force and effect as if the same had been taken upon issues joined
2057 between parties upon the said bills, answers, and replications, and the final hearing of said causes shall commence at 2 o'clock on October 18th, 1897, before Judge Foster and Judge Thayer, judges of said court, upon the pleadings, proofs, master's report, and exhibits aforesaid, without further testimony from either party, and a decree be rendered thereon.

Fourth. The unsuccessful party on said hearing shall immediately take the necessary proceedings to appeal the said causes to the proper court of appeals and file the record therein, and both parties shall join in an application to the court to which the appeal shall be taken to advance the causes upon the docket of said court, and, as far as they are able, to secure a speedy hearing of said appeal.

J. M. WOOLWORTH,
WAGGENER, HORTON & ORR, AND
D. R. HITE, *Solicitors for the Plaintiffs.*
L. C. BOYLE, *Attorney General,*
PRATT, DANA & BLACK,
Solicitors for Kansas City Stock Yards Co.

October 7th, 1897.

Endorsed: Nos. 7427, 7453. Stipulation for hearing. Filed Oct. 9, 1897. Geo. F. Sharitt, clerk.

2058 In the Circuit Court of the United States for the District of Kansas, First Division.

CHARLES U. COTTING, Complainant, *vs.* KANSAS CITY STOCK YARDS COMpany *et al.*, Defendants.	No. 7427. In Equity.	Cases Consolidated.
FRANCIS LEE HIGGINSON, Complainant, *vs.* KANSAS CITY STOCK YARDS COMpany *et al.*, Defendants.	No. 7453. In Equity.	

Order.

In accordance with the order of this court of October 4th, 1897, now appear the parties to the foregoing suits by their respective solicitors, and thereupon there is presented and filed by said solicitors the written stipulation of the parties of the date of October 7th, concerning the final hearing of said suits and other matters in relation thereto.

Thereupon it is ordered, adjudged, and decreed by the court that said suits shall be heard for a final decree, in accordance with said written stipulation, on Monday, October 18th, 1897, commencing at the hour of 2 p. m. It is also ordered, adjudged, and decreed that the demurrers heretofore filed to the bills of complaint on file herein by L. C. Boyle, attorney general, be overruled; to which ruling of the court the said L. C. Boyle then and there duly excepted. It is further ordered, adjudged, and decreed that the defendant
2058½ L. C. Boyle, attorney general, is permitted to answer to said bills on or before the 15th day of October, 1897, and the complainants are to file their replications to said answers on or before the 15th of October, 1897.

Thereupon Hon. George W. Clark presents his written application for an allowance for his fees and expenses as special master in the foregoing suits; which application having been heard and considered, it is ordered, adjudged, and decreed by the court that said special master be allowed for his compensation the sum of $3,000, and also $130 for his expenses; and thereupon C. H. Nettels, employed as stenographer in said suits to take in stenographic notes and transcribe the testimony in said suits, presents his application for compensation therefor, and said application having been duly considered, it is hereby ordered, adjudged, and decreed by the court that the said C. H. Nettels be allowed as such stenographer, for his services, the sum of $1,160.50.

CASSIUS G. FOSTER, *Judge.*

(Endorsed:) No. 7427, 7453. Order. Filed Oct. 9th, 1897 Geo F. Sharitt, clerk.

2059 In the Circuit Court of the United States for the District of Kansas, First Division.

FRANCIS LEE HIGGINSON, Complainant,
vs.
THE KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants.
No. 7453. In Equity.

The answer of Louis C. Boyle, as attorney general of the State of Kansas, one of the defendants, to the bill of complaint of Francis Lee Higginson, complainant, and the amendments thereto.

This defendant, now and at all times hereafter, saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereto or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant for answering saith:

That this defendant admits that said Francis Lee Higginson is a stockholder in the Kansas City Stock Yards Company, being the owner and in the possession of 296 shares of the capital stock of said corporation, 200 shares of which have been owned and held by him for more than seven years last past, and which shares of stock so held, owned, and possessed by him are of the full value of more than $5,000, but denies that the same is or at the filing of said bill of complaint was of the value of $37,000; and this defendant denies that for the purpose of this suit the complainant is a citizen of the State of Massachusetts, but avers that under the law applicable to this case the complainant is a citizen of the State of Kansas, the said Kansas City Stock Yards Company being a corporation duly created, organized, and existing under the laws of the State of Kansas and not under the laws of any other State, Territory, or country; and this defendant further says it may be true, for anything this defendant knows to the contrary, that
2060 the complainant invested in and became the owner of said stock in the said corporation for a valuable consideration to earn and obtain thereon a reasonable and a fair dividend or rate of interest on the actual value thereof, but this defendant is an utter stranger to all and every such matters and cannot form any belief concerning the same; and this defendant admits that since the complainant became the owner and holder of said stock up to this time the said corporation has been so economically and successfully operated and managed as to produce some profit to the complainant and to the other stockholders of said corporation who have invested their money in the said corporation and in the stock thereof, and that the complainant is entitled to demand and require that the said corporation shall continue to carry on its business so that

the said corporation, if possible, shall earn some dividends or interest on the present actual value of its property, if judiciously purchased and used for stock-yards purposes, so that the complainant, as a stockholder therein, shall receive some compensation for the use of his money and property invested in said corporation and in the stock thereof without prejudice to the rights of others, but this defendant denies that the complainant is entitled to demand and require that the said corporation shall continue to carry on its business in the future as in the past, and denies that for this purpose and to this end the complainant is entitled to demand of the said Kansas City Stock Yards Company and the officers and agents thereof that the said company shall prescribe, exact, and collect such rates, charges, and compensation from persons doing business with it or making purchases of hay, corn, or other property therefrom as that the said corporation shall earn a compensation or interest on the present actual value of its property, if it be possible so to do in the lawful transaction of its business; but this defendant avers that the business of said corporation is affected with a public interest and it is the duty of the legislature of the State of Kansas to regulate the charges of said corporation for yardage of cattle, calves, hogs, and sheep and for profits derived from feeding such live stock so that said charges shall be fair and reasonable to the owner and shipper of live stock as well
2061 as to said corporation, and that said corporation, its officers and agents, are not entitled to fix said charges and profits for feeding at their own will without regard to the value of the service performed to the owner and shipper of such live stock, nor to base said charges upon injudicious investments without regard to the value of the property purchased or the use to be made of the same; and, further answering, this defendant saith that he is not advised otherwise than by said bill that the amount involved in this suit and the matter in dispute exceeds, exclusive of interest and costs, the sum and value of $2,000, nor that the damages and losses which will accrue to the complainant if the act of the legislature in said bill of complaint referred to shall be enforced in any respect will largely exceed, exclusive of interest and costs, the sum and value of $2,000, but this defendant believes said statement to be untrue, and therefore denies the same.

And, further answering, this defendant saith that he admits that The Kansas City Stock Yards Company, defendant, is a corporation duly created, organized, and existing under the laws of the State of Kansas and a citizen thereof and of the first division of said district, with power to construct, maintain, and operate stock yards in this State and to own real estate for that purpose, with authority also to erect and maintain buildings, yards, pens, and such other improvements as may be necessary for its purposes as a stock yards company, and also with authority for receiving, feeding, and otherwise caring for live stock at its yards in Kansas City, Kansas, but this defendant denies that said corporation has or ever had the right to own real estate and buildings for hotels, railways, or switches, or for shipping live stock, and denies that it was authorized to purchase,

own, or use real estate or to keep offices in the State of Missouri; and as to the period of duration of said corporation this defendant denies that the present corporate name has existed for more than twenty years, but avers that the corporation that carried on the business of said stock yards was first organized under the name of the Kansas Stock Yards Company in the year 1871, and it retained said name until the year 1876, when it was reorganized under the
name of the Kansas City Stock Yards Company, and in De-
2062 cember, 1883, said company was again reorganized under the name of the Kansas City Stock Yards Company, but as to said last reorganization the stockholders in the two corporations at said time were identical, and the president and most of the other general officers have held their respective officers ever since 1875 continuously, and ever since said last-mentioned date the several companies have been considered and treated as identical, and the last-named company accepted all the property of the former company and assumed all its obligations of every nature and character whatsoever, and so this defendant avers that the said Kansas City Stock Yards Company, defendant, has been organized and existing for a period exceeding twenty years last past under its several names aforesaid; and this defendant denies that said corporation had or has the right of demanding, exacting, and collecting for its services performed and for its property sold to others such prices as might be agreed upon by parties interested, but this defendant admits that said corporation was and is entitled to a fair compensation for its services, including the yardage of cattle, calves, hogs, and sheep, and a fair compensation for feeding the same, including the value of the feed furnished to such live stock, but that said charges were and are subject to regulation by the legislature of this State with reference to the value of the services performed and the feed furnished, the interest of said stock yards company and of the owners and shippers of said live stock both to be considered; and, further answering, this defendant saith he denies that the yards occupied by said stock yards company in carrying on its business consists of about 160 acres, about 120 acres of which are situated in this State and about 40 acres in the State of Missouri, but avers that the net area of the main yards in Kansas sused for stock-yards purposes was and is 38.625 acres and the net area of the north yards in Kansas used for stock-yards purposes was and is 10.054, besides 4.846 acres of public streets and alleys of Kansas City, Kansas, enclosed in said stock yards, but to which the said stock yards company has no title, and the net area of the quarantine yards in Kansas used for stock-yards purposes was and is 12 815 acres, making a total area of lands in Kansas
owned and used by said stock yards company for stock-yards
2063 purposes of 61.494 acres, besides 4.846 acres of streets and alleys used and occupied, but not owned, by said stock yards company, and besides the foregoing lands in Kansas the said stock yards company owns and uses for stock-yards purposes a tract in Missouri, adjoining the main yards in Kansas, of 37.837 acres, and said company also uses an area of 3.871 acres of streets and alleys east of the west line of Bell street which it does not own, making a

grand total of land owned by said stock yards company and used for stock-yards purposes of 99.331 acres and 8.717 acres of streets and alleys used but not owned by said stock yards company; but said tract in Missouri embraces 7.501 acres used exclusively for the horse and mule department (including the east one-half of Bell street from the south line of 16th street to the south line of 17th street, .301 acre, and the east one-half of Bell street from the south line of 17th street to the south line of said stock yards, .565 acre), and said 7.501 acres ought to be deducted from said area in Missouri, leaving only 30.336 acres remaining, because the charges of said department are in nowise affected by the act of the legislature of this State and said department is operated separately and upon a different plan from the department for cattle, calves, hogs, and sheep, the charge being *per diem* for all services, shelter, water, and feed, and said act cannot be made applicable to said horse and mule department; and this defendant denies that about sixty-five per cent. of the earnings of said corporation are derived from its business carried on in this State, and that about thirty-five per cent. thereof is derived from its business carried on in the State of Missouri; but this defendant avers that all the business of said corporation, as such, is, in contemplation of law, carried on in the State of Kansas, where alone said corporation is authorized to hold real estate for its purposes and where alone it is authorized to keep and maintain its general offices for the transaction of its business; and this defendant admits that for a very large part of this real estate the said corporation was compelled to pay large prices therefor, but this defendant denies that this was because it was absolutely necessary for its use to successfully carry on its business, but this defendant admits that
2064 the large prices paid for such part of said land was because the same was at the time of purchase occupied by a good class of buildings, which it was necessary to remove, and that the land so formerly occupied by such buildings is now being used entirely for stock-yards purposes, but this defendant avers that a large part thereof is used exclusively for the horse and mule department, as aforesaid; and this defendant avers that the investment of said stock yards company in land used for stock-yards purposes up to the year 1893 was about $330,000, including all such lands in Kansas and Missouri, but at that time said stock yards company determined to extend its yards into the business part of Kansas City, Missouri, and having no authority to condemn such land it recklessly purchased the same at any prices the numerous owners thereof demanded, the purchase including very many business and residence buildings and owned mostly by the occupants thereof for business and residence purposes, and these were torn down or removed in order to build barns thereon for the horse and mule department and also for cattle pens north thereof, said land costing said stock yards company nearly $1,300,000, whereas the same quantity of adjoining land, which would have served the purposes of said stock yards company as well, could have been purchased for about one-third of that amount. This defendant admits that the improvements at the stock yards, consisting of buildings, railroad

tracks, switches, viaducts, pens, and other improvements, are very extensive and retained in a superior condition, all of them either floored with plank or paved with vitrified brick, but this defendant denies that the cattle pens alone cover about eighty acres, and this defendant avers that said cattle pens are of a capacity to handle 22,000 head of cattle daily, and this defendant admits that the corporation has hog sheds with a daily capacity of 30,000 head of hogs, and also stables for about 4,000 head of horses and mules, but this defendant denies that the sheep sheds have a daily capacity of 20,000 head of sheep, but alleges that said sheep sheds have a daily capacity of 15,000 head of sheep. This defendant admits that during the past five years the capacity of the yards of the corporation has been, to meet the growing demands of business, almost doubled, at a large expenditure of money, and that the authorized capital stock of said corporation is $7,500,000

2065 *$7,500,000*, of which $7,368,650, on December 31, 1896, had been issued, but this defendant denies that all of the same has been paid up; and as to said stock of said corporation, this defendant alleges the facts to be as follows: Said original corporation was chartered and organized in September, 1871, with a capital stock of $96,000, which was paid up, and no other stock was ever paid for except out of the earnings of said corporation, but the stock was increased from time to time by issues of stock as dividends, instead of paying said dividends in cash, as follows: In 1875, $96,000; in 1876, $66,300; in 1877, $331,300; in 1878, $235,000; in 1887, $456,933; in 1890, $404,000; in 1894, $268,100; in 1896, $433,450; making total stock dividends $2,291,083; and during the same time cash dividends were paid to the stockholders as follows: In 1872, $13,890; in 1874, $33,600; in 1875, $16,800; in 1876, $9,600; in 1877, $26,504; in 1878, $28,000; in 1879, $21,150; in 1881, $98,720; in 1882, $99,480; in 1883, $99,480; in 1884, $119,391; in 1885, $149,250; in 1886, $119,400; in 1887, $150,600; in 1888, $282,800; in 1889, $323,200; in 1890, $323,200; in 1891, $311,143; in 1892, $370,592; in 1893, $296,694; in 1894, $451,133.50; in 1895, $554,716; in 1896, $429,160 50, and February 1, 1897, $110,557.50; making a total of $4,439,161.50; and in addition to the foregoing there was, in 1883, a distribution of certain of the surplus land of the company of the value and amount of $221,815, a considerable portion of said land being purchased back by the company in 1893 and 1894 at the price of more than $30,000 per acre, and out of the cash dividends aforesaid the stockholders purchased and paid for stock as follows: In 1876, $73,000; in 1878, $42,400; in 1881, $15,000; in 1887, $535,000; in 1890, $900; in 1893, $55,100; making a total of $721,400, besides the original paid up stock of $96,000. In addition to the foregoing, stock was issued in 1894 to the amount of $1,667,100, which was sent to the Boston financial office of the company for disposition, but at least $500,000 or the proceeds thereof remain in the financial office of the company in Boston. Said stock yards company also issued to the stockholders in 1884 stock to the amount of $995,000, for which it received no considera-

tion whatever, but merely doubled the amount of its capital
2066 stock and issued to the stockholders two shares instead of one; and in 1888 the company in like manner issued stock to the stockholders without receiving any consideration therefor to the amount of $1,058,067. Besides the foregoing, said stock yards company issued, in 1879, to Fowler Brothers, as an inducement to locate a packing-house near the yards in Kansas City, Kansas, $40,000 of stock; and in 1893 the stock yards company issued to the Armour Packing Company stock amounting to $500,000 to induce said company to locate its beef-packing establishment in Kansas City, Kansas, near the said stock yards; and in the several ways aforesaid stock was issued amounting in all to $7,368,650, and this stock covers all the property of said stock yards company, whether used for stock-yards purposes or not, and said property, real and personal, including money not used for stock-yards purposes, amount in value to about $2,000,00–; but as to the said donation of stock to Fowler Brothers, the stock dividends thereon have amounted to $137,081, making a total of $177,081, and, besides, said stock has drawn cash dividends amounting to $153,202; and as to the said $500,000 of stock donated to the Armour Packing Company, the stock dividends thereon have amounted to $60,812; so that there is outstanding on account of said original donation $560,812 of stock, and said stock has drawn cash dividends amounting to $158,817, so that there is now outstanding stock in the hands of Fowler Brothers and Armour Packing Company on account of said donations the amount of $737,893, notwithstanding they have received cash dividends amounting to $312,019, making a total of stock and cash dividends amounting to $1,049,912; and, besides the foregoing, the stock yards company donated to Fowler Brothers, in 1879, $50,067.18 in cash and $30,500 in real estate, and also, in 1883 and 1884, to Schwarzschild & Sulzberger $100,000 in cash; to Swift and Company, in 1883, $62,175 in real estate; to Hollis and Company, in 1884, $2,070 in real estate; to Kingan and Company, in 1887, $33,132.10 in real estate, all for like purposes, said donations being paid out of the earnings of the company, besides the dividends, or as proceeds of stock sold; and this defendant denies that the actual present value of the property of said corporation so employed for its stock yards, as aforesaid, is in excess of the value of
2067 $7,500,000, and this defendant avers that the present value thereof does not exceed $4,574,731.84 at the excessive valuations per acre following, to wit:

Main yards in Missouri, 37.837 acres, at $45,000....	$1,702,665
Main yards in Kansas, 38.625 acres, at $30,000.....	1,158,750
Quarantine yards, 12.812 acres, at $12,000.....	153,780
North yards, 10.054 acres, at $23,000...	231,242
Total value of land.....	$3,246,437
Value of improvements...	1,328,294.84
Grand total....	$4,574,731.84

And the foregoing embraces all the lands and improvements used for stock-yards purposes; and this defendant avers that the amount of money actually invested in said property is about $3,201,274.05, including grading, filling, and improvements, as follows:

Main yards in Missouri	$1,499,614.24
Main yards in Kansas	230,110.81
Quarantine yards	102,659.44
North yards	40,594.72
Total cost of land, with grading, etc.	$1,872,979.21
Improvements	1,328,294 84
Grand total	$3,201,274.05

And of the cost of the land in Missouri $1,263,362.75 was on account of the recent extension in Missouri; and the foregoing includes the horses and mule department. The present value of said property, exclusive of the horse and mule department, is about $4,214,087.98. The cost of the land in the horse and mule department was $230,643.86, and the cost of the buildings and improvements thereon, $130,000, making in all $360,643.86, and this should be deducted from the amount of said investment, thus showing the cost of the property devoted to the care of cattle, calves, hogs, and sheep to be, $2,840,630.19, and should also be deducted from the total present value of the property devoted to cattle, calves, hogs, and sheep, thus showing the amount thereof to be, $4,214,087.98; and this defendant admits that for the year 1896 the total receipts of live stock at said stock yards were as follows:

1,714,532 cattle,
100,166 calves,
993,126 sheep,
2,605,575 hogs,
57,847 horses and mules,

making a total of all stock handled by said yards of 5,471,446,

2068 and that the gross earnings of the corporation for the year 1896 were one million twenty-three thousand eight hundred seventy and $\frac{20}{100}$ dollars ($1,023,870.20); but this defendant denies that the total expenditures were five hundred forty-nine thousand three hundred fifty-one and eighty one-hundredths dollars ($549,351.80), all of which were necessary for the operation and maintenance of the property, leaving net earnings of four hundred seventy-four thousand five hundred eighteen and $\frac{40}{100}$ dollars ($474,518.40), about six per centum on the capital stock of the corporation for that year; but this defendant avers that the total operating expenses of said stock yards company for the year 1896 were only $368,059.05, said expenses, which are shown in detail by the books of said stocks yards company, being made up as follows:

For all labor that goes into the expenses of operating the yards, including the salaries and wages paid to officers and employés in the various department and divisions, except as stated in the two succeeding entries	$211,262.19
For labor and material required to make necessary repairs on the yards, including, in many cases, substitution of vitrified brick for worn-out plank floors in the pens and also rebuilding pens	32,309.22
For cleaning yards	8,116.09
For repairing wagons	212.73
For advertising, traveling expenses of agents, stationery, fuel, postage supplies, telephone service, license fees, horse-shoeing, and worthless accounts charged off	66,191.65
For taxes	22,671.25
Premiums on policies of insurance	12,836.00
Rent paid for leased grounds	7,200.00
Live stock lost, injured, or damaged	1,292.77
W. S. Tough, as manager of horse and mule department	5,967.15
Total disbursements	$368,059.05

And that the net profits of said corporation for the year 1896 were $655,811.05; and this is shown by the account books of said stock yards company, which were correctly kept for said year, or nearly twelve per cent. upon $5,355,433 of stock issued for any consideration whatever; and the foregoing statement of expenditure includes the sum of $2,346.56 paid for taxes on real estate owned by said stock yards company, but not used for stock-yards purposes; and the claim set up by the complainant that the annual expenses for 1896 should be increased from $368,059.05,
2069 as shown by the books of the company, to the sum of $549,351.80 is entirely without foundation and fraudulent, such increased sum being for part of the system of general improvements and extensions commenced in 1893 and nearly completed in 1896, said improvements being charged to construction account, for which it would be proper to issue additional stock if necessary to raise funds for the purpose; and this defendant avers that said stock yards company commenced the extension of the horse and mule department late in 1892, and expended chiefly for said purpose the sum of $83,015.10, in addition to the regular annual expense of repairs for said year, and this additional sum was properly charged to construction account; and in the year 1893 a further sum of $73,192.27, in addition to the regular annual expenses, was used for the same purpose, and was properly charged to construction account; and in 1894 the further sum of $242,784.89, in addition to the regular annual expenses, was invested in the extension of said yards and improvements, and this sum was likewise properly charged to construction account; and in 1895 the further

sum of $116,685.23 was expended in the same manner and for the same purpose, in addition to the regular annual expenses, and this sum was likewise properly charged to construction account; and in 1896 the sum of $169,584.65 was expended in a similar manner, and likewise properly charged to construction account, and said additional sums expended for the extension of the yards and improvements in 1892, 1893, 1894, and 1895 were capitalized and stock issued therefor, being part of the issue of 1894, amounting to $1,667,100, the surplus fund having been used until said issue of stock, and the said additional sum for 1896 was for improvements in every respect of the same nature as said additional sums charged to construction account in 1892, 1893, 1894, and 1895, and the reasons for a failure to capitalize said improvements for 1896 were that there was a surplus in the treasury at Kansas City in excess of said amount, besides the large surplus in the Boston financial office, and the amount of stock that might be issued without amendment to the charter or filing a new charter was less than said sum, and it was intended to use the remaining stock for the purchase of certain lands north of the north yards; but all proper repairs and

2070 renewals for the year 1896 were included in the repairs account, amounting to $32,309.22, as they had been in former years, and the additional $169,584.65 was not in any respect for annual repairs or renewals, but was for the extension and completion of the permanent improvements commenced in 1892 and not yet entirely completed in 1896, and the total sum of the net profits of $655,800.05 for the year 1896 was distributed amongst the stockholders, as also a considerable part of the surplus of preceding years, and the total amount of dividends from 1884 to 1896, inclusive, is as great as the total of the net profits, as shown by the books of the company, not including said construction account; and this defendant denies that the yards, pens, and most of the improvements of said stock yards have to be necessarily replaced or renewed every five to seven years, costing large sums of money therefor, and consuming a large amount of the yearly earnings of the said corporation; and this defendant avers that the annual repairs and renewals do not cost more than $30,000 to $35,000 per annum, and this sum is sufficient to keep and maintain the yards in good repair and condition; and this defendant admits that the charges now prescribed, exacted, and collected by the corporation and which have existed for several years are as follows: For driving, yarding, watering, and weighing cattle, 25 cents per head; calves, 10 cents per head; hogs, 8 cents per head, and sheep, 5 cents per head; but this defendant denies that such charges and prices are fair, reasonable, and just considering all conditions and the services rendered therefor, and only furnish reasonable compensation to the said defendant corporation, and that all existing charges and prices of the corporation for hay, corn, and other grain sold or delivered by it under the conditions and circumstances in which the same are sold, delivered, and fed, and the care and attention given by the corporation to cattle and other stock in its yards in connection with the sale, delivery, and feeding of hay, corn, and other grain

are fair, just, and reasonable, and the operation of the stock yards under such rates, charges, and prices, and the collection thereof, only permit the corporation to earn a fair and reasonable compensation or interest on the present actual value of its property so necessarily occupied and used by it for stock-yards business, and such earnings are about six per cent on the
2071 money invested in said corporation after paying the operating expenses therefor, taxes and expenses of the necessary repairs, renewals and the maintenance of the same, and this defendant avers that such charges and prices are unfair, unreasonable, and unjust, considering all conditions and the services rendered therefor, and they furnish excessive compensation to the defendant corporation, and from the year 1871 until the year 1893 the defendant corporation never charged more than twenty cents per head for the yardage of cattle, including incidental services, but in that year it raised the rate to twenty-five cents per head and has ever since maintained said rate, and the existing charges and prices of the corporation for hay and feeding of the same are $20 per ton, although it does not cost more than $6 per ton, and the price charged for corn, oats, and other grain, including the feeding of the same, is $1.00 per bushel, notwithstanding the same can be purchased for twenty cents per bushel, and said exorbitant prices for hay and grain and the feeding of the same have been maintained for many years and even when the prices of hay and grain were much lower than above stated, and said rates are and for years past have been so unreasonable that shippers have often fed their live stock on the train or before reaching the yards in order to avoid the excessive and outrageous charges for feed and feeding, and thus the revenues and the profits of the defendant corporation have been reduced below the amount that said company would receive if a reasonable price only were charged therefor, and a deduction of the rates for feed and feeding as prescribed by the statute of this State would stimulate the demand for feed and feeding so as to increase rather than diminish the profits of the stock yards company from that source, the said stock yards company having an entire monopoly of said business and not allowing any person to buy or sell hay or grain in the yards and not allowing any owner or shipper of live stock to feed the same; and this defendant is not fully advised that the charges for yardage and feed at stock yards of the said corporation are the same as those of other stock yards similarly conducted and the same as the stock yards at Saint Louis, Missouri; East Saint Louis and Chicago, Illinois, and Omaha, Nebraska, but this defendant
2072 says that the rates at one locality may properly differ from those at another, and the proximity of the yards of the defendant company to the great corn, grain, and hay producing belt enables said company to feed live stock at a lower rate than the other points above named, and, besides this, the cheapness of the lands owned by the defendant corporation and used by it for stock-yards purposes other than said late extension of the yards would also enable said company to furnish yardage at a cheaper rate than some of the other points above mentioned, and, furthermore, such

rates of other yards are probably too high and the result of combinations or secret understandings to keep up the prices and even to advance the same, notwithstanding the prices of live stock may be much lower than heretofore and the value of the service to the owner and shipper of live stock less than formerly. This defendant admits that the defendant corporation makes no charges whatsoever on any stock that is not sold in the yards when received from railroad companies, but this defendant is not advised why it does not do so. This defendant admits that live stock is subject to the order of the owner and is delivered to the railroads or buyers without charge to the owner except yardage and feed charges, but this defendant avers that the loading and unloading of live stock is a duty devolving upon the carrier, for which no extra charge can properly be made to the owner or shipper of the stock; and this defendant admits that said stock yards so owned and operated by said corporation have been and are of great pecuniary value and benefit to the stock raisers and shippers of Kansas, Missouri, and adjacent States, but this defendant avers that such stock raisers and shippers are entitled to the benefit of a market at some convenient point on the Missouri river, and such would necessarily be furnished in any event; and this defendant admits that the location and operation of the stock yards of said corporation in this State and in Kansas City, Missouri, in connection with other causes, have induced large packing establishments to locate in Kansas City, Kansas, for the purpose of buying, killing, and packing cattle and other stock, thereby furnishing an excellent and convenient market to stock raisers and shippers of Kansas, Missouri, and adjacent States, but this defendant avers that such facilities for handling and slaughtering live stock would be
2073 furnished at some central point along the Missouri river, whether the defendant corporation had ever existed or not; and this defendant further avers that he is not advised otherwise than by said bill that fat cattle sold in Kansas City in 1896 netted an average of 9¾ cents per hundred pounds more than the same stock sold in Chicago the same day, and that hogs netted nine cents more and sheep seventeen cents more; but this defendant avers that said allegations, if true, are entirely immaterial, as the stock raisers and shippers are under no obligation to ship their live stock a distance of 500 miles further than necessary, and incur the shrinkage thereby, in order to find a market which would certainly be afforded at some convenient point on the Missouri river, whether the defendant company had ever existed or not.

And this defendant is not advised otherwise than by said bill that the importance of the stock market at Kansas City to the producers and stock raisers and shippers of Kansas has been greatly increased by the successful operation of the large and extensive stock yards of said corporation at and near Kansas City, Kansas, and at and near Kansas City, Missouri, but this defendant avers that the stock raisers and shippers of Kansas are entitled to the benefit of a market, however the same may be produced or created, and are under no obligation to pay excessive rates to the defendant

corporation because of the location of its yards at a central point in the Missouri valley and near a considerable city.

And, further answering, this defendant saith that he admits that Charles F. Morse, defendant, is a director, vice-president, and general manager of the Kansas City Stock Yards Company and a resident and citizen of the State of Missouri, but he denies that said Charles F. Morse is the only managing director thereof; and he also admits that at the present time, in consequence of the absence of the president of said corporation, in Europe, said Charles F. Morse is also the acting president thereof, but this defendant denies that said Charles F. Morse has full authority to fix the rates and prices to be charged by said stock yards company; and defendant
2074 admits that Harry P. Child is the assistant general manager of said corporation and a citizen and resident of the State of Missouri; that Eugene Rust, defendant, is the general superintendent of said corporation and a resident and citizen of the State of Missouri; that Elliott E. Richardson is the secretary of said corporation and a resident and citizen of the State of Kansas and of the first division of said district, and that Louis C. Boyle, as attorney general of the State of Kansas, is a citizen and resident of the State of Kansas and an inhabitant of the first division of said district, and the duly elected, qualified, and acting attorney general of said State.

This defendant, further answering, saith he admits that on the 3rd day of March, 1897, Honorable John W. Leedy, as governor of the State of Kansas, approved a certain act of the legislature of said State known as "committee substitute for house bill No. 87," and entitled "An act defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating all charges thereof and removing restrictions in the trade of dead animals and providing penalties for violations of this act;" that in the said act it was provided the same should take effect and be in force from and after its publication in the official State paper of the State of Kansas; that a certified copy of the said act is attached to the said bill of complainant, marked "Exhibit A," and made a part thereof, to which reference is made in said bill as if fully incorporated therein, but this defendant avers that the word "prescribing" in the title of said bill, as shown by said copy, is erroneous, the word used in said title being "providing;" and this defendant admits that said act was published in the official State paper of the State on the 12th day of March, A. D. 1897, and this defendant is not advised otherwise than by said bill that said act is now by the defendant Louis C. Boyle, as attorney general of the State of Kansas, alleged to be in full force, virtue, and effect as a valid law of the State of Kansas; and this defendant avers that he never had occasion to allege anything of the foregoing nature, and the force and virtue of said act is not dependent upon the allegation of this defendant or any other person, and this defendant admits that said act provides, among other things, that "it is hereby made
2075 the duty of the attorney general to prosecute all violations of the provisions of this act."

This defendant, further answering, saith that he denies that said

act approved March 3, 1897, and heretofore referred to as Exhibit "A," is unconstitutional and void under the provisions of the Constitution of the United States, and particularly under the 3rd clause of section 8, article 1; and this defendant is not advised that there is any article 8 in the original Constitution of the United States; and this defendant avers that the provisions of the 5th amendment to the Constitution of the United States were intended as limitations upon the power of the Federal Government and not as restrictions upon the authority of the States; and this defendant denies that said act is unconstitutional under the 14th amendment to the Constitution of the United States; and this defendant denies that neither the legislature of the State of Kansas nor the State of Kansas has power to enact or enforce said act or any of the provisions thereof so as to include or apply to the Kansas City Stock Yards Company, nor any legislative power or other authority to define the duties of the said corporation in carrying on and operating its business, or any legislative power or other authority to regulate the charges of said corporation for services rendered by it to *to* stock-shippers or other persons; but this defendant avers that the State of Kansas, by its legislature, had full power and authority to pass and publish said act, and now has full power and authority to enforce the same; and concerning the legislative power or other authority to abridge in any manner the rights, privileges, and immunities of said stock yards company, this defendant avers that said company is a corporation of the State of Kansas and not entitled to the rights, privileges, and immunities of a citizen of the United States; and this defendant denies that there is no legislative power or other authority to prescribe any penalties whatever for the violation of said act or any of its provisions; but this defendant avers that the State, through its officers and departments, has full power and authority to prescribe such penalties and to enforce the same.

This defendant, further answering, saith that he denies that
2076 said act approved March 3, 1897, is unconstitutional and void as contrary to and in conflict with the Constitution of the United States, and especially as contrary to and in conflict with the provisions of the 14th amendment thereof, in this, to wit, that it denies to the Kansas City Stock Yards Company, within the jurisdiction of the State of Kansas, the equal protection of the laws, in that by its provisions it is made to apply only to such stock yards within the State "into which live stock is received for the purpose of exposing or having the same exposed for sale or feeding and doing business for a compensation, and which for the twelve preceding twelve months shall have had an average daily receipt of not less than 100 head of cattle, or 300 head of hogs, or 300 head of sheep," in that by such provision it singles the Kansas City Stock Yards Company out of all the other citizens and corporations within the State of Kansas without giving to such corporation any specific or corresponding benefit therefor, and restricts the application of said act to the Kansas City Stock Yards Company alone, there being no other stock yards operated in the State of Kansas except the defendant corporation, which for the preceding twelve months has

"an average daily receipt of not less than 100 head of cattle, or 300 head of hogs, or 300 head of sheep;" and this defendant avers that if the facts alleged were true, yet they consitute no valid or legal objection to the validity of said act; and this defendant denies that while said act in controversy does not specifically name the Kansas City Stock Yards Company, it so describes it that there can be no possible doubt with regard to the attempted exclusive application of the said act to the said defendant corporation, and this is substantially the same as naming the said corporation in the said act; but this defendant avers that whether or not any other stock yards company comes at present within the terms of said act, yet said act is of a general nature and broad enough to and will include every such stock-yards corporation being at present or hereafter coming within its terms; and as to the said allegation that said act not only attempts to fix the charges of said corporation for driving, yarding, watering, and weighing stock, but also attempts to fix the prices
2077 at which it may sell and deliver hay, corn, and other grain, and therefore said corporation is not treated as other owners and operators of stock yards within the State are treated, and which for the preceding twelve months have a less "average capacity than 100 head of cattle or 300 head of hogs or 300 head of sheep," this defendant, while admitting the same, denies that the facts stated constitute any legal objection to the validity of said act; and as to the allegation that said corporation is not treated as other corporations or persons are treated who are engaged in selling and trading in personal property, nor treated equally with such other corporations or persons, this defendant avers that it is treated the same as all other corporations of the same character coming within the terms of the act, and that said corporation has an entire monopoly of the yardage and feeding of all live stock passing into or through Kansas City by railroad, and no other person or corporation can either sell feed at its yards, nor can owners or shippers feed their own stock at said yards, and the business of said stock yards company is affected with a public interest, and it has an entire monopoly of the yardage and feeding of cattle at Kansas. This defendant denies that said act is strictly class legislation, arbitrarily made and enacted to discriminate against the defendant corporation and the complainant and other stockholders of the said corporation, and denies that it prevents such corporation from being treated as other stock yards corporations are treated and as other corporations and persons are treated engaged in the same business in the State under like conditions and circumstances.

This defendant, further answering, saith that he denies that the act approved March 3, 1897, is unconstitutional and void, as contrary to and in conflict with the provisions of the Constitution of the United States, and especially as contrary to and in conflict with the provisions of the 5th and 14th amendments thereof, in this, to wit, that thereby the State of Kansas is attempting to deprive the Kansas City Stock Yards Company and the complainant, as a stockholder therein, of liberty and property without due process of law and without just compensation therefor; and this defendant avers

that said 5th amendment to the Constitution of the United
2078 States can have no application to this case for the reasons hereinbefore stated; and this defendant denies that said defendant corporation is entitled, if it can do so in the operation of its business, to earn a fair and reasonable compensation or interest yearly on the present actual value of its property, and he denies that the present actual value thereof exceeds the sum of $7,500,000, and he denies that if said act is or shall be applied to all the business of said corporation and its provisions thereof shall be enforced against said defendant, its officers, agents, and servants, then the legislature of the State of Kansas and said State have unlawfully assumed the right and illegally attempted to exercise the right to reduce the rates and charges for said corporation for the driving, yarding, watering, and weighing of cattle in this State, and also abridging, restricting, and limiting said corporation in the prices at which it may sell and deliver hay, corn, and other grain, so as to diminish and reduce its charges, rates, revenues, and earnings in such a manner and to such an extent as to prevent it and the complainant and the other stockholders therein from earning, receiving, or obtaining a reasonable per cent. for the money inves-ed in said corporation, and preventing said corporation and the complainant and other stockholders therein from earning, receiving, or obtaining a reasonable or fair compensation or dividend upon the present actual value of the property of said corporation, and he denies that the enforcement of the provisions of the said act against the defendant corporation will reduce the receipts of said corporation yearly to the amount of over $309,000, which reduction, with the necessary continuing costs of renewals of its yards, pens, and other improvements, will leave no fair and reasonable compensation to the said corporation nor any dividends or interest or compensation to the complainant or to the other stockholders of said corporation, and will destroy the value of the stock of the complainant and the stock of the other stockholders of said corporation and the value of the property of said corporation and render the same worthless, and if said act is enforced against said corporation it deprives said corporation and all stockholders therein, including the complainant, of their property as completely as by a special act expressly providing for its depreciation, confiscation, and destruction; but this defendant
2079 avers that, instead thereof, the business of said corporation will be largely increased in volume by the application of the rates prescribed by said act, and especially by the feeding of cattle at the yards, so that the profits of the company will be diminished but little, if at all, and even without the increase of any part of the business and allowing the expenditures to be as great as heretofore and without any diminution thereof, said corporation will be able to make a fair dividend both upon its legitimate and its illegitimate stock, and a large dividend upon its legitimate stock and still larger upon the present actual value of the property, and a very large dividend upon the amount of money actually invested, even without eliminating and separating therefrom the horse and mule de-

partment; but this defendant avers that neither the amount invested in the horse and mule department nor the revenues nor the expenses thereof should be taken into account for the reasons hereinbefore stated; and if the cost of the property, exclusive of the horse and mule department, be taken at the value of $3,114,564.56, and the present value thereof, $4,650,206, and the net earnings, exclusive of the horse and mule department, at $342,116.21, then, if the statutory rates be applied to the business of 1896, the rate per cent. on the cost price of the yards would be 10.98 per cent., and on the present value of the yards 7.35 per cent; and in the foregoing estimates nothing is deducted by reason of the proportion of the annual expenses properly chargeable to the horse and mule department, including the general office expenses and salaries of officers, fire protection, and fire insurance, water, electric light, or damages for lost or injured stock.

This defendant, further answering, saith that he denies that said act approved March 3, 1897, is unconstitutional and void as contrary to and in conflict with the provisions of the Constitution of the United States and of the State of Kansas, and especially as contrary to and in conflict with the provisions of article 8 of the original amendments to the Constitution of the United States; and this defendant avers that said article 8 of the amendments can have no application to this case, the provisions thereof being intended as limitations upon the power of the Federal Government, and
2080 not as restrictions upon the authority of the States; and he denies that said act is in conflict with the provisions of section 9 of the bill of rights of the constitution of Kansas in this, to wit, that said act permits the infliction of cruel and unusual punishments; that the last clause of section 7 of the said act provides that any person or persons violating the provisions thereof shall be deemed guilty of misdemeanor, and upon conviction thereof "for each subsequent offense he or they shall be fined in any sum not less than $1,000 and by imprisonment in the county jail not less than six months," but the maximum fine and imprisonment is not fixed, thereby permitting fines for each subsequent offense therein referred to be of any amount exceeding $1,000 and the infliction of imprisonment for any period of time exceeding six months, thereby authorizing and requiring the infliction for each subsequent offense referred to of excessive and unusual fines and of cruel and unusual punishment, such fines and imprisonment being wholly unlimited; and this defendant avers that the maximum punishment in such cases is fixed by section 293 of the crimes act, as published in the General Statutes of 1868, chapter 31, or in the General Statutes of 1889, as section 427, and being general paragraph 2567, said maximum being twelve months' imprisonment in the county jail, or $1,000 fine, the full section being as follows: "Whenever any offender is declared by law punishable upon conviction by confinement and hard labor, or by imprisonment in a county jail, or by fine, or by both such fine and imprisonment, and no limit is fixed by law to the duration of imprisonment in the jail, or to the fine, in such cases the convict shall, in no instance, be sentenced to

a longer term of imprisonment in a county jail than twelve months, nor shall the fine in any such case exceed one thousand dollars;" and this defendant denies that such fine or imprisonment, or both, would be a "cruel and unusual punishment" in any event; and this defendant denies that said last-mentioned clause of section 7 of said act is also unconstitutional and void in this, to wit, that it is contrary to the provisions of the Constitution of the United States in that it leaves to judicial discretion, without any limitation, the infliction of punishment for each subsequent offense therein referred to by excessive fines and cruel and unusual punishments; and
2081 this defendant avers that any injustice to a defendant is effectually prevented by said act of March 3, 1897, and in said section 293 of the crimes act of 1868.

This defendant, further answering, saith that he denies that said act approved March 3, 1897, a copy of which is attached to the bill of complaint as Exhibit "A" and made a part of said bill, is unconstitutional and void in this, to wit, that said act never passed the legislature of the State of Kansas properly, legally, or constitutionally, but he admits that on January 15, 1897, a certain bill, known as number 87 and entitled "An act to regulate stock yards and providing punishment for a violation thereof," was introduced in the house of representatives of the State of Kansas by a member thereof and was then read for the first time, and admits that said bill was read a second time and referred to the committee on live stock, but avers that said second reading was on January 18, and denies that it was on January 17, 1897; and this defendant admits that on February 3, 1897, the chairman of that committee reported to the house of representatives a "committee substitute for house bill No. 87," but denies that said substitute was entitled "An act to regulate stock yards and providing punishment for a violation thereof," but this defendant avers that the title of the substitute bill was as follows: "An act defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating all charges thereof, and removing restrictions in the trade of dead animals, and providing penalties for violation thereof;" and this defendant denies that said "committee substitute for house bill No. 87" had the same title as the original bill No. 87 aforesaid, and this defendant avers that said substitute bill was then printed by the State printer and was distributed among the members of both houses, the title being just as when introduced by the committeee on live stock and next above given; and this defendant is not advised otherwise than by said bill that "committee substitute for house bill No. 87" was treated in the house of representatives more as new matter than as substitute, but he denies that it was read a first and second time in said house with the same title as the original bill and then referred to the committee of
2082 the whole house, but avers that it was read the first and second time in the house with the title of the substitute bill, as hereinbefore stated and fully quoted, and was then referred to the committee of the whole house; and this defendant denies that at each of its stages as it progressed through said house the title to

said "committee substitute for house bill No. 87" is given in the journal and record of said house as "An act to regulate stock yards and providing punishment for a violation thereof," being the same title as house bill No. 87, as aforesaid, but this defendant avers the fact to be that in committee of the whole house the title was amended by striking out the final word "thereof" and inserting in its place the words "of this act," so as to read as it afterward appeared in the enrolled bill now published as chapter 240 of the Session Laws of 1897, and since said amendment in committee of the whole the title has never been otherwise than as in the enrolled bill and the published statute; and this defendant denies that said house bill No. 87 and said "committee substitute for house bill No. 87" never had any other title in said house or in the journals or records thereof than as follows: "An act to regulate stock yards and providing punishment for a violation thereof," but this defendant avers that said original house bill No. 87 and the substitute thereof never had the same title, and said substitute bill never had the title "An act to regulate stock yards and providing punishment for a violation thereof;" and this defendant avers that on February 25 the committee recommended the bill for passage, and on February 27 the committee on engrossed bills reported that said bill was properly engrossed, and said engrossed bills had the same title that now appears in the enrolled bill and in the statute book, and on March 1, 1897, the bill passed the house of representatives by a vote of 109 yeas, 1 nay, and absent or not voting, 15, and on the same day the senate was notified of the passage of the bill by the house with the title just as the same appeared in the engrossed bill and as now appears in the enrolled bill and in the statute book; and this defendant denies that after the said bill and substitute entitled "An act to regulate stock yards and providing punishment for a vio-
2083 lation thereof" was passed by the house, it was then sent to the senate of the State of Kansas with the following title: "An act to regulate stock yards and providing punishment for a violation thereof;" and this defendant avers that the bill or proposed act entitled "An act to regulate stock yards and providing punishment for a violation thereof" did not pass either house of the legislature; and this defendant denies that the said bill and substitute aforesaid was called up for passage in the senate, an emergency declared by a vote taken therefor, and the bill read a second and third time by title as follows: "Committee substitute for house bill No. 87, an act to regulate stock yards and providing punishment for a violation thereof;" but this defendant avers that said bill was read in the senate with the same title as appeared in the engrossed bill and now appearing in the enrolled bill and in the statute book; and this defendant denies that after several amendments, which were improperly, irregularly, illegally, and unconstitutionally made and adopted thereto, the said bill and "committee substitute for house bill No. 87" passed the senate with the title "An act to regulate stock yards and providing punishment for a violation thereof," but this defendant avers that in the senate certain amendments were properly made to the body of the bill, but no change was made

in the title, and said bill, with the title as appearing in the engrossed bill and as now appears in the enrolled bill and in the statute book, was properly passed by the senate on March 2, 1897, by a vote of 28 yeas, 8 nays, and 3 absent or not voting; and this defendant denies that said bill and "committee substitute for house bill No. 87" never had any other title in said senate or in the journal or records thereof than as follows: "An act to regulate stock yards and providing punishment for a violation thereof," but this defendant avers that the proposed act having said title was never in the senate and never in the house of representatives after the introduction of said substitute bill on February 3, and on the same day the house was notified of the passage of the bill with amendments by the senate, and the house concurred in the senate amendment- by a vote of 102 yeas, 2 nays, and 21 absent or not voting, and the bill passed; and this defendant denies that neither
2084 the house of representatives nor the senate of the State of Kansas ever adopted or agreed to the following title, to wit, "An act defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating all charges thereof, and removing restrictions in the trade of dead animals, and providing penalties for violations of this act," which now appears in the official publication of said act made, as aforesaid, on the 12th day of March, 1897; but this defendant avers that said act passed each house of the legislature with the title as now appearing in the enrolled bill and in the statute book, and on March 3 the house committee on enrolled bills reported the bill as correctly enrolled, and that it had been properly signed by the president and secretary of the senate and the speaker and chief clerk of the house, and was presented to the governor for his signature March 3, 1897, and in this report, which is copied in full on the journal, the title is stated just as it appears in the enrolled bill and in the statute book; and this defendant denies that said "committee substitute for house bill No. 87" never passed the legislature of the State of Kansas with the title of "An act defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating all charges thereof, and removing restrictions in the trade of dead animals, and providing punishment for violations of this act," or any similar title; and this defendant denies that said title is wholly unauthorized and without any force or effect because the same was inserted or substituted improperly, illegally, and unconstitutionally, without the consent of the senate and the house of representatives of the State of Kansas, for the title "An act to regulate stock yards and providing punishment for a violation thereof;" and this defendant avers that the title of said act was *ever* in any manner changed after the slight change made in committee of the whole house on February 4, 1897, and no substitution of title was ever made; and this defendant denies that "committee substitute for house bill No. 87" passed the legislature of the State of Kansas with the title of "An act to regulate stock yards and providing punishment for a violation thereof," and denies that said "committee

substitute for house bill No. 87" has never been properly or
2085 legally enrolled or approved by the governor or published in the official paper of the State of Kansas with its proper title; but this defendant avers that said "committee substitute for house bill No. 87," with the title as now appearing in the enrolled bill and in the statute book, properly passed both houses of the legislature, and on March 3, 1897, was properly approved by the governor and was duly published; and this defendant denies that the said act now published as "An act defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating all charges thereof, and removing restrictions in the trade of dead animals, and providing punishment for violations of this act," was never passed, adopted, or enacted by the legislature of the State of Kansas according to the provisions of the constitution thereof; but this defendant avers that said act with said title was properly and constitutionally passed and approved; and this defendant denies that the enforcement or any attempt to enforce the provisions of the said act of March 3, 1897, by the defendants or either of them would be contrary to and in conflict with the 14th amendment of the Constitution of the United States and various provisions of the constitution of the State of Kansas, because the said act is wholly illegal, unconstitutional and void, and of no force and effect whatever as a law or otherwise; but this defendant avers that the enforcement of said act would be in harmony and not in conflict with the 14th amendment to the Constitution of the United States nor to any provision of the constitution of the State of Kansas, and that said act is wholly legal, constitutional and valid, and in full force and effect as a law of the State of Kansas.

This defendant, further answering, saith that he denies that said act approved March 3, 1897, is unconstitutional and void, as contrary to and in conflict with the provisions of the Constitution of the United States, and especially as contrary to and in conflict with the provisions of the 5th and 14th amendments thereof, because it is an illegal effort to interfere with the lawful rights, powers, and privileges of the defendant corporation, having the right and power to seek and obtain such compensation as it properly can for
2086 the use of its own property and the sale of proper articles, and is also an illegal effort to interfere with and abridge the lawful rights, powers, privileges, and immunities of the complainant and the other stockholders of the defendant corporation who are seeking and trying to obtain by having invested in said stock such compensation as they legally can for the use of their own money and property, and therefore said act is nothing less than an effort by the legislature of the State of Kansas and the State of Kansas to regulate the private business of a private corporation and of private individuals, and to limit, abridge, and destroy the compensation which the said corporation may legally exact and collect for the use of its own property and for its stockholders, and said act and the provisions thereof have not been and are not now exercised and are not proposed to be exercised by said State in any manner

involving the public health or the public morals or any other legitimate police power; and this defendant avers that said 5th amendment is not applicable herein for the reasons hereinbefore stated; and said stock yards company having embarked in a business in which the public has an interest and having an entire monopoly thereof at Kansas City, its business is subject to regulation by the State of Kansas, and said defendant corporation has no right to exact exorbitant compensation for the use of its pens nor for feeding live stock while confined therein, and its charges heretofore have been unjust, unreasonable, exorbitant, and oppressive, and the limitation of such charges is within the legitimate police power of the State, and the same has been exercised reasonably by the legislature of this State by the provisions of said act.

This defendant, further answering, saith that he denies that said act approved March 3, 1897, and all of the various sections thereof are unconstitutional and void, as contrary to and in conflict with the 3rd clause of section 8, article 1, of the Constitution of the United States, which confers upon Congress power to regulate commerce with foreign nations and among the several States, and the several acts of Congress passed in pursuance thereof, in this, to wit, that the said Kansas City Stock Yards Company, defendant, owns and operates extensive and costly stock yards, as aforesaid, in the county of Wyandotte and State of Kansas, in the vicinity of the mouth of the Kansas river, in and near
2087 to what is known as Kansas City, Kansas, and in Jackson county, in the State of Missouri, and in and near to what is known as Kansas City, Missouri, and said yards in both States have all the usual and necessary conveniences for the reception, driving, feeding, and shipment of cattle and other stock, and in carrying on its business and operating its yards it receives almost daily not only from this State and from the State of Missouri, but also from Texas, Colorado, Nebraska, and twenty-three other States and Territories, great numbers of cattle and other stock, which are transported by the railroads to the said defendant corporation for care, feeding, and shipment in this State and Missouri, and when so transported by the railroads of the several States and Territories to the yards of the defendant corporation in this State and in the State of Missouri they are yarded, fed, cared for, sold, and shipped; that the yards in the State of Kansas and Missouri are so connected and carried on that the cattle and other stock go from one State to the other in said yards and are driven to and from the said yards in both States as the business of the stock raiser and shipper demands and as the rules and regulations of the stock yards company require; that very frequently cattle so received from the States of Missouri and Kansas, and also from the other States aforesaid, are shipped from the yards of defendant to Chicago, in the State of Illinois, and also to other cities and States outside of the States of Kansas and Missouri; that the said business of the said corporation is not carried on exclusively within the limits of the State of Kansas, but, as aforesaid stated, also within the State of Missouri and other States; that said yards, railroad tracks, switches, and other property of the said corporation are

a part of commerce itself, are necessarily connected with interstate commerce, and that the said defendant is engaged in interstate commerce, and the provisions of said act affect commerce and amount to a regulation of it within the meaning of the Constitution of the United States, and therefore the provisions of the said act belong to that class of powers which cannot be exercised by the legislature of Kansas or by the State itself or by any other State of the Union, and this defendant avers that no part of the business of the defendant corporation which is affected in any manner by said act
2088 is commerce, said act relating only to the charges of said company for the use of its pens and incidental services, and for the feeding of live stock, including the feed furnished; that said stock yards company neither owns, operates, nor uses any railway, motive power, or rolling stock, nor has any interest in the transportation of live stock to or from its yards, and it has no interest in the sales of live stock and takes no part in negotiating them, and the feeding of live stock, including the furnishing of feed, is not commerce, and said stock yards company does not handle or dispose of feed as a commercial transaction, but it keeps the same on hand so that it may feed the stock and derive large profits therefrom, no one being permitted to sell or feed hay or grain in the stock yards, the company reserving to itself the privilege of furnishing feed for and performing the services of feeding the live stock as a monopoly, and no owner or shipper of live stock can obtain or use feed except by ordering the same from said company at any price fixed by it, the feed being delivered and fed to the animals wherever they may be in the yards, and price of said feeding, as well as the yardage, being kept and retained by the stock yards company out of the proceeds of sales, where such sales are effected, or as advance charges paid by any railroad company which may transport such animals from said yards to other markets in the same manner as other advance charges are ordinarily paid by railroad companies, and said stock yards company does not in a legal or commercial sense sell any feed, but the owner or shipper of cattle, calves, hogs, or sheep order feed to be given to such animals, and said stock yards company fixes its own price for the service of feeding, including the furnishing of the feed, and this defendant avers that said act of the legislature does not purport to govern yardage and feeding charges outside of the State of Kansas, but the Kansas City Stock Yards Company being wholly and solely a Kansas corporation and entitled by law only to keep its general offices and to transact its business within this State, the legislature of Kansas may legally and properly reasonably regulate its yardage and feeding charges, although said company may for its own convenience yard and care for some of the native cattle on the Missouri side of the State line, and under the laws of this State (never complied with by said corporation) it is required to file annually
2089 in the office of the secretary of state of this State a report and statement of its condition, with all the receipts and expenditures of the company for the year next preceding; and this defendant avers that said act of the legislature affects only the charges of

said corporation for yardage and feeding cattle, calves, hogs, and sheep in like manner as the charges of the keeper of a feed-stable for stall-room and feeding might be regulated by the legislature if the business of such keeper were of a public nature and affected by a public interest. This defendant avers that the business of said stock yards company, in so far as it relates to the yardage and feeding of cattle, calves, hogs, and sheep, with the incidental services connected therewith, is of a public nature affected with a public interest, and said company has an entire monopoly of said business at Kansas City, there being no other stock yards at said place, neither for many miles round about; and this defendant further avers that there is no act of Congress, general or special, in any way prescribing, regulating, or limiting the charges of said stock yards company for the yardage and feeding of cattle, calves, hogs, and sheep or any of them, and the incidental services connected therewith, and said act of the legislature does not in any manner conflict with the power of Congress to regulate commerce with foreign nations and among the several States or with any act of Congress relating to that subject, the business of said stock yards company, so far as affected by said act of the legislature, being only to keep feed-lots for hire and, as an incident thereto, to feed the cattle, calves, hogs, and sheep for compensation while in the lots.

This defendant, further answering, saith that he denies that said act approved March 3, 1897, and all of the various sections thereof are contrary to and in conflict with the provisions of an act of Congress approved May 29, 1884, entitled "An act for the establishment of a bureau of animal industry to prevent exportation of diseased cattle and to provide means for the suppression and extirpation of pleuro-pneumonia and other contagious diseases among domestic animals," and of an act of Congress approved August 8, 1894, making appropriations for the Department of Agriculture for the
2090 fiscal year ending June 30, 1895, and the regulations concerning cattle transportation made and promulgated in accordance with the provisions of said acts of Congress, aforesaid, by the Secretary of the United States Department of Agriculture, at his office in Washington, District of Columbia, on January 27, 1896, in this, to wit, that under the provisions of section 4 of said act, referred to as Exhibit "A," it is expressly provided that "there shall be but one yardage charged," and it is further provided therein that "for driving, yarding, watering, and weighing cattle 15 cents per head" may only be charged, demanded, and collected by the defendant corporation for doing such services in the State of Kansas; that under the said regulations concerning cattle transportation so made and published by the Secretary of the United States Department of Agriculture, places, pens, and grounds are separately set apart by the defendant corporation in the county of Wyandotte and State of Kansas, in the vicinity of the mouth of the Kansas river, consisting of about forty acres of land called "quarantine grounds," where cattle transported by rail to the defendant corporation between the 15th day of February and the 15th day of November of each and every year from the area south of or below the

Federal quarantine line legally established and designated under the acts of Congress aforesaid are unloaded to be watered, fed, cared for, and sold for slaughter or shipped therefrom, as provided by the said regulations of the United States Department of Agriculture; that large numbers of cattle are so transported yearly to and unloaded in said places, pens, and grounds so set apart by the defendant corporation in accordance with said regulations concerning said cattle so transported, and that such cattle must be placed in separate yards, pens, and grounds and no other cattle admitted thereto; that the same must be kept carefully cleansed and disinfected at great cost, as provided by the regulations concerning such cattle so transported; that to water, feed, and take care of cattle and other stock in the places, pens, and grounds so kept by the defendant corporation for quarantine purposes, the prices fixed in section 4 of said act, referred to as Exhibit "A," are wholly insufficient and not compensatory for the services, attention, and yardage absolutely necessary to comply with the said regulations aforesaid, and
2091 if the said defendant corporation is restricted to the maximum prices fixed in said section 4 of said act, then said cattle so transported by rail from said area south or below said Federal quarantine line cannot be properly fed, watered, cared for, and yarded by the defendant corporation in accordance with the requirements of such regulations, as aforesaid stated, and therefore on account of the maximum charges and prices fixed in said section 4 of said act to be collected for yardage, and the prices to be charged under section 5 of said act for hay, corn, and other grain, if enforced against the said corporation, it might be compelled to refuse to permit cattle to be unloaded for feed, water, care, attention, yardage, sale, and shipment, as aforesaid, in its special places, pens, and grounds so set apart for the reception of said cattle, and the provisions of said act therefore interfere with the carrying out of the regulations aforesaid concerning said cattle transportation and the acts of Congress aforesaid, and will deprive the said defendant corporation and the complainant and the other stockholders of said corporation from obtaining reasonable, fair, and just compensation for the yardage and feeding of said cattle so transported through the State of Kansas from the area south of and below the Federal quarantine line aforesaid, and will also prevent and forbid owners and shippers of such cattle from having sufficient, convenient, and proper quarantine grounds in the county of Wyandotte, State of Kansas, where said cattle may be fed, watered, cared for, sold, or shipped in accordance with the said regulations concerning cattle transportation; and this defendant avers that said acts of Congress, the regulations prescribed by the Secretary of Agriculture, and the statutes of this State are all intended to operate concurrently, and to prevent the spread of infectious and contagious diseases among domestic animals, and this State, through its legislature, has fully co-operated with the plans and methods of the Commissioner or Secretary of Agriculture for the extirpation of pleuro-pneumonia and other contagious, infectious, or communicable diseases among cattle, as suggested and indicated in section 3 of said act for the establish-

ment of a bureau of animal industry, etc., and the quarantine yards referred to are the cheapest part of the grounds oc-
2092 cupied by the defendant corporation for stock-yards purposes, and Texas or other southern cattle originating south of the Government quarantine line can be yarded, fed, and cared for at as cheap a rate as native cattle can be yarded, fed, and cared for, if not cheaper, and no difference has ever been made by said stock yards company in the yardage and feed charges between quarantine cattle and native cattle, and the regulations of the Federal Government relate only to sanitary measures, which it is as much to the interest of the stock yards company as of all shippers of stock to enforce and carry out, and it is no more expensive to properly clean and care for said quarantine yards than for that part of said yards occupied by native cattle, and the yardage and feed charges prescribed by said act of the legislature are ample as compensation for the accommodations, services, and feed furnished by said stock yards company; and this defendant further avers that said stock yards company has never on any occasion heretofore charged for more than one yardage of the same animal, and the provision of section 4 of said act of the legislature that "there shall be but one yardage charged" is only a statutory rule based upon the invariable custom of said stock yards company heretofore existing.

This defendant, further answering, saith that he admits that by section 8 of said act referred to as Exhibit "A" it is made the duty of said Louis C. Boyle, as attorney general of the State of Kansas, to prosecute all of the violations of the provisions of said act; but this defendant is not advised otherwise than by said bill that the complainant fears that the said attorney general may cause the defendant corporation and any and all of its officers and agents who shall violate any of its provisions to be arrested and prosecuted; and this defendant is not advised otherwise than by said bill that the complainant fears that the attorney general will attempt to enforce said act through the courts of Wyandotte county, Kansas, and through the courts of the State of Kansas by a multiplicity of criminal actions or proceedings against it and every person failing or refusing to comply with the provisions thereof, including said defendant corporation and its officers and agents, thereby greatly harassing and annoying said defendant corporation and its officers
2093 and agents, and causing them great expense and consuming valuable time, unless said defendant corporation, its officers and agents, shall put in force at once the said charges and prices specified in said sections 4 and 5 of said act and shall obey and carry out all of the terms and provisions of said act and each section thereof, and this defendant is not advised otherwise than by said bill that the complainant fears that the said Louis C. Boyle, as attorney general, will proceed at once to carry into force said arrests and prosecutions unless immediately restrained by the order and injunction of this honorable court, and this defendant denies said several allegations as to the fears of said complainant, and this defendant avers that he has no personal or private interest in this controversy and no other corporation, body politic, or person

named as a party to this action has any interest whatever therein, except the Kansas City Stock Yards Company and those identified with it in interest, and the State of Kansas is the only body politic, corporation, or person having an interest adverse to said stock yards company and those identified in interest with it, and this court cannot have jurisdiction of this controversy until the State of Kansas can and shall be made a party thereto, and so this defendant says that this court has no jurisdiction of this action and that an assumption of jurisdiction by it is contrary to and forbidden by the 11th amendment to the Constitution of the United States, under the averment of said bill that the complainant is a citizen of the State of Massachusetts.

This defendant, further answering, saith that he is not advised otherwise than by said bill whether it be true or not that heretofore, to wit, on the 12th day of March, 1897, the Kansas City Stock Yards Company and also Charles F. Morse, a director, vice-president, and general manager of said corporation, and also at present the acting president of said corporation, on account of the passage of said act by the legislature of the State of Kansas and the heavy penalties therein provided, and the fear that said Louis C. Boyle, as attorney general aforesaid, will at once proceed to arrest and prosecute said corporation and its officers and employés and to
2094 save the defendant corporation, its officers, agents, servants, and employés, from being so arrested, harassed, and annoyed by the said Louis C. Boyle, as attorney general, in attempting to enforce the provisions of said act, informed the complainant — publicly gave notice that the provisions of the said act would be applied by the defendant corporation, its officers and agents, to the operation of its yards in the State of Kansas, and that all the provisions therein contained concerning charges for yardage or otherwise and all the prices for the sale and delivering of hay, corn, and other grain therein fixed would be observed and carried out in the State of Kansas, and that said act and all the terms thereof would be observed and obeyed by the said defendant corporation, its officers and agents, and also publicly gave notice that on the 13th day of March, 1897, the prices fixed in said section 4 of said act would be at once ordered to — put in force in the operation of the yards and the property of said defendant corporation in the State of Kansas; that no greater prices would be demanded, exacted, or collected for driving, yarding, watering, and weighing cattle and other stock than as therein specified, and also that said defendant corporation, its officers and agents, would sell and deliver in the State of Kansas, at the prices fixed in said section 5 of said act, hay, corn, and other grain at the prices, terms, and weight specified in said section 5 of said act, and also would in all other ways comply with the provisions of the said act because of the heavy fines and penalties therein provided and because of the fear of arrests and prosecutions as thereinbefore alleged, and therefore this defendant denies the same, and this defendant also denies that said Charles F. Morse was or is the only managing director of said corporation, and he denies that said act of the legislature is in any respect invalid.

This defendant, further answering, saith that he is not advised otherwise than by said bill whether it be true or not that heretofore, on the 12th day of March, 1897, the complainant, as a stockholder of said defendant corporation and as interested in the economical and successful management of the business of said corporation and who was then and there a stockholder and shareholder at the time of the transactions complained of, desiring to secure on the part of the managing director of said defendant corporation a revocation of said order and directions of said defendant corporation and of its said acting president to put in force
the provisions of said act, did serve a notice in writing
2095 upon said defendant corporation and its managing directors,
demanding that the said defendant corporation and the said managing directors aforesaid should continue to exact, receive, and collect the rates and prices now existing in the operation of the business of the said defendant corporation for driving, yarding, watering, and weighing stock, and also in selling and delivering hay, corn, and other grain, so that its property would yield some compensation for service performed, sales made, and the business carried on, and that said corporation take proper legal proceedings to protect itself and its stockholders from the effect of such law; and this defendant denies the same; and this defendant is not advised otherwise than by said bill whether it be true or not that the defendant corporation and its managing directors have each refused to comply with the request of the complainant and wholly disregard the same; and this defendant denies the truth of said averment, and also denies that said Charles F. Morse is the sole managing director of said corporation; and this defendant is not advised otherwise than by said bill whether it be true or not that the complainant hoped that the said defendant corporation and its managing directors and the other officers and agents of said corporation would have complied with the request of complainant; and this defendant denies the same and denies that in justice and equity the said defendant corporation and its officers and agents should have complied with said request if made; and this defendant is not advised otherwise than by said bill whether it be true or not that the said defendant corporation and its managing directors and the other officers and agents of said defendant corporation under their control and direction, to the great wrong and injury of the complainant in the premises, absolutely refuse to comply with such request unless
restrained and ordered to do so by some court of competent
2096 jurisdiction, and this defendant denies the same; and this
defendant denies that such request, if made, was reasonable or proper; and this defendant is not advised otherwise than by said bill whether it be true or not that the cause of the failure of the complainant to obtain a revocation of said order and directions by the said defendant corporation and of the managing directors thereof is as stated therein; that the said defendant corporation and the said directors are in fear of the annoyance, harassment, humiliation, and expense to which the said defendant corporation and the said Morse and the other officers, agents, servants, and

employés of said corporation will be immediately subjected, under the act therein referred to, and especially so if its provisions are attempted to be enforced by Louis C. Boyle, as attorney general, or any other officer of the State of Kansas, and therefore the said defendant and the said directors absolutely refuse to secure to complainant such action or any action as he has demanded and desires on the part of and from the said corporation and of and from the managing directors thereof unless so ordered by some court of competent jurisdiction aforesaid; and this defendant denies the same and denies that the attorney general ever proposed or made any threats against said corporation or against the managing directors, and denies that said act of the legislature is invalid in any respect; and this defendant denies that this suit is not a collusive one with the defendants or any other person or party to confer on the above-entitled court of the United States jurisdiction of a case which it would not otherwise have cognizance of, and denies that such suit is brought in good faith for the protection of the complainant's own interest in the defendant corporation and to prevent his said stock therein from being depreciated, lost, and destroyed, in violation of law and the provisions of the Constitution of the United States, as aforesaid; but this defendant alleges that said suit is a collusive one between the complainant and the said Kansas City Stock Yards Company to confer jurisdiction upon this court of a case
2097 which it would not otherwise have cognizance of, and that the suit is not brought in good faith for the protection of his own interest in the defendant corporation and to prevent his said stock and his property therein from being depreciated, lost, and destroyed, in violation of law and of the provisions of the Constitution of the United States, and alleges that said suit is brought for the sole benefit of the said Kansas City Stock Yards Company and is prosecuted entirely under its direction.

2098 And this defendant, further answering, saith that he denies that the enforcement of the provisions of such act against the defendant corporation, its officers and agents, and the observance of the provisions of said act fixing a maximum charge to be made by said defendant corporation for services rendered, accommodations furnished, and hay, corn, and other grain sold by the defendant corporation, will deprive defendant corporation of the power of exacting reasonable and fair compensatory rates for yardage and for services rendered and for hay, corn, and other grain sold in its yards, and will deprive it of the use of its property and, in effect, of the property itself without the due process of law; and if the said defendant corporation and its officers and agents are allowed to put in force the maximum rates and prices aforesaid specified in said act the complainant and the other stockholders of said defendant corporation will be unable to secure a fair and reasonable per cent. on their money invested in said corporation and in the stock and property thereof and will be unable from the earnings of the said defendant corporation to obtain any reasonable and fair compensation, dividend, or interest on the actual value of their said stock, and that the said defendant corporation cannot under such maxi-

mum rates, charges, and prices earn any reasonable or fair compensation, interest, or dividend on the present actual value of its property; and this defendant avers that this defendant has not proposed or threatened anything against said corporation or its officers or against the complainant, and the enforcement of said act will not deprive the defendant corporation of the power of exacting reasonable and fair compensatory rates for yardage and for other services rendered and for hay, corn, and other grain fed in its yards, and avers that by the enforcement of said act the defendant corporation will only be deprived of the power of exacting unreasonable and unfair rates for yardage and other services and for hay, corn, and other grain fed in its yards, and this will not deprive said corporation of the use of its property or of the property itself without due process of law, and by such enforcement the complainant and other stockholders of defendant corporation will be able to secure
2099 a reasonable per cent on their money invested in said corporation and in the stock and property thereof and will be able from the earnings of said defendant corporation to obtain reasonable and fair compensation, dividends, or interest on the actual value of their stock, and that the defendant corporation can under such maximum rates, charges, and prices earn reasonable and fair compensation, interest, or dividends on the present actual value of its property, and this without the injustice and extortion practiced on its patrons as heretofore; and this defendant admits that the complainant has the right to demand of the said defendant corporation and of the said Charles F. Morse, as acting president and managing director thereof, that the business of said corporation shall be carefully, properly, economically, and successfully managed, but this defendant denies that complainant has the right to demand that said business shall be managed as heretofore, and avers that only such reasonable rates and compensation should be exacted, demanded, and collected for services rendered, accommodations furnished, and for hay, corn, and other grain fed by said defendant corporation as prescribed by said act of the legislature; and this defendant denies that said corporation may have the right to earn reasonable and fair compensation, interest, or dividends on the present actual value of its property unless in doing so the value of the services to the owner and shipper of live stock shall be taken into consideration, as well as the interest of said stock yards company; and this defendant denies that if such corporation continues in force its present existing rates, charges, and prices it can and will earn reasonable and fair compensation, interest, and dividends on the present actual value of its property which can properly be divided among the stockholders of said corporation, including the complainant; but this defendant avers that if said corporation continues in force the rates heretofore existing it can and will receive an unfair compensation and a compensation unreasonably high considering the cost and the value of the services rendered; and this defendant says he is not advised otherwise than by said bill whether it be true or not that the complainant fears

that if such maximum rates, charges, and prices are put in
2100 force, as aforesaid, the complainant and the other stockholders of said defendant corporation will suffer great and irreparable injury for which damages at law would be no adequate remedy; but this defendant avers that said rates are not destructive nor unreasonably low, and avers that the complainant and other stockholders of said corporation would suffer no injury whatever from the enforcement of said statutory rates, but would only be prevented from oppressing its patrons and obtaining an unfair advantage of them by exacting more than the reasonable value of the services performed and the accom-odations and feed furnished; and this defendant is not advised otherwise than by said bill whether it be true or not that said defendant corporation and the officers and agents thereof will carry out their said orders and directions aforesaid unless restrained by the order and injunction of this honorable court, and this defendant denies the same.

And this defendant, further answering, denies that said complainant is entitled to the relief or any part thereof in said bill of complaint demanded; and this defendant prays the same advantage of his aforesaid answer as if he had pleaded or demurred to the said bill of complaint; and this defendant prays to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

L. C. BOYLE,
As Attorney General of the State of Kansas, Defendant.

DAVID MARTIN,
Solicitor and of Counsel for said Defendant.

2101 UNITED STATES OF AMERICA,
State and District of Kansas, First Division, } *ss:*
County of Shawnee,

Louis C. Boyle, being duly sworn, does depose and say that he is the defendant named in the foregoing answer subscribed by him; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he verily believes it to be true.

L. C. BOYLE.

Subscribed and sworn to before me this 14th day of October, A. D. 1897.

[SEAL.] J. A. ROSEN,
Notary Public, Shawnee County, Kansas.

My commission expires October 13, 1900.

Endorsed: No. 7453. Francis Lee Higginson, complainant, *vs.* The Kansas City Stock Yards Company *et al.*, defendants. Answer of Louis C. Boyle, as attorney general. Filed Oct. 15, 1897. Geo. F. Sharitt, clerk.

2102 In the Circuit Court of the United States for the District of Kansas, First Division.

CHARLES U. COTTING, Complainant,
vs.
THE KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants.
No. 7427. In Equity.

The answer of Louis C. Boyle, as attorney-general of the State of Kansas, one of the defendants, to the bill of complaint of Charles U. Cotting, complainant, and the amendments thereto.

This defendant, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant, for answering, saith:

This defendant admits that said Charles U. Cotting, complainant, is a stockholder in the Kansas City Stock Yards Company, being the owner and in the possession of 250 shares of the capital stock of said corporation, and that said shares of stock so held, owned, and possessed by him are of the full value of more than $5,000, but denies that the same is or at the filing of said bill of complaint was of the value of $30,000, and this defendant denies that for the purposes of this suit the complainant is a citizen of the State of Massachusetts, but avers that under the law applicable to this case the complainant is a citizen of the State of Kansas, the said Kansas City Stock Yards Company being a corporation duly created, organized, and existing under the laws of the State of Kansas and not under the laws of any other State, Territory, or country; and this defendant further says it may be true, for anything this defendant knows to the contrary, that the complainant in-

2103 vested in and became the owner of said stock in the said corporation for a valuable consideration to earn and obtain thereon a reasonable and a fair dividend or rate of interest on the actual value thereof, but this defendant is an utter stranger to all and every such matters and cannot form any belief concerning the same; and this defendant admits that since the complainant became the owner and holder of said stock up to this time the said corporation has been so economically and successfully operated and managed as to produce some profit to the complainant and to the other stockholders of said corporation who have invested their money in the said corporation and in the stock thereof, and that the complainant is entitled to demand and require that the said corporation shall continue to carry on its business so that the said corporation, if possible, shall earn some dividends or interest on

the present actual value of its property if judiciously purchased and used for stock-yards purposes, so that the complainant, as a stockholder therein, shall receive some compensation for the use of his money and property invested in said corporation and in the stock thereof without prejudice to the rights of others; but this defendant denies that the complainant is entitled to demand and require that the said corporation shall continue to carry on its business in the future as in the past, and denies that for this purpose and to this end the complainant is entitled to demand of the said Kansas City Stock Yards Company and the officers and agents thereof that the said company shall prescribe, exact, and collect such rates, charges, and compensation from persons doing business with it or making purchases of hay, corn, or other property therefrom as that the said corporation shall earn a compensation or interest on the present actual value of its property, if it be possible so to do in the lawful transaction of its business; but this defendant avers that the business of said corporation is affected with a public interest, and it is the duty of the legislature of the State of Kansas to regulate the charges of said corporation for yardage of cattle, calves, hogs, and sheep and for profits derived from feeding such live stock, so that said charges shall be fair and reasonable to the owner and shipper of live stock as
2104 well as to said corporation, and that said corporation, its officers and agents, are not entitled to fix said charges and profits for feeding at their own will, without regard to the value of the service performed to the owner and shipper of such live stock, nor to base said charges upon injudicious investments without regard to the value of the property purchased or the use to be made of the same; and, further answering, this defendant saith that he is not advised otherwise than by said bill that the amount involved in this suit and the matter in dispute exceeds, exclusive of interest and costs, the sum and value of $2,000, nor that the damages and losses which will accrue to the complainant if the act of the legislature in said bill of complaint referred to shall be enforced in any respect will largely exceed, exclusive of interest and costs, the sum and value of $2,000, but this defendant believes said statement to be untrue, and therefore denies the same.

And, further answering, this defendant saith that he admits that The Kansas City Stock Yards Company, defendant, is a corporation duly created, organized, and existing under the laws of the State of Kansas and a citizen thereof and of the first division of said district, with power to construct, maintain, and operate stock yards in this State and to own real estate for that purpose; with authority also to erect and maintain buildings, yards, pens, and such other improvements as may be necessary for its purposes as a stock yards company, and also with authority for receiving, feeding, and otherwise caring for live stock at its yards in Kansas City, Kansas; but this defendant denies that said corporation has or ever had the right to own real estate and buildings for hotels, railways, or switches, or for shipping live stock, and denies that it was authorized to purchase, own, or use real estate or to keep offices in the State of Missouri;

d as to the period of duration of said corporation, this defendant
enies that the present corporate name has existed for more than
venty years, but avers that the corporation that carried on the
siness of said stock yards was first organized under the name of
e Kansas Stock Yards Company in the year 1871, and it retained
id name until the year 1876, when it was reorganized under the name
of the Kansas City Stock Yards Company, and in December,
105 1883, said company was again reorganized under the name
of the Kansas City Stock Yards Company; but as to said last
eorganization the stockholders in the two corporations at said time
vere identical, and the president and most of the other general
fficers have held their respective officers ever since 1875 continu-
ously, and ever since said last-mentioned date the several companies
ave been considered and treated as identical, and the last named
ompany accepted all the property of the former company and as-
sumed all its obligations of every nature and character whatsoever,
and so this defendant avers that the said Kansas City Stock Yards
Company, defendant, has been organized and existing for a period
exceeding twenty years last past, under its several names aforesaid;
and this defendant denies that said corporation had or has the right
of demanding, exacting, and collecting for its services performed
and for its property sold to others such prices as might be agreed
upon by parties interested; but this defendant admits that said
corporation was and is entitled to a fair compensation for its serv-
ices, including the yardage of cattle, calves, hogs, and sheep, and a
fair compensation for feeding the same, including the value of the
feed furnished to such live stock, but that said charges were and are
subject to regulation by the legislature of this State with reference
to the value of the services performed and the feed furnished, the
interest of said stock yards company and of the owners and ship-
pers of said live stock both to be considered; and, further answer-
ing, this defendant saith he denies that the yards occupied by said
stock yards company in carrying on its business consists of about
160 acres, about 120 acres of which are situated in this State and
about 40 acres in the State of Missouri, but avers that the net area
of the main yards in Kansas used for stock-yards purposes was and
is 38.625 acres, and the net area of the north yards in Kansas used
for stcok-yards purposes was and is 10.054, besides 4.846 acres of
public streets and alleys of Kansas City, Kansas, enclosed in said
stock yards, but to which the said stock yards company has no title,
and the net area of the quarantine yards in Kansas used for stock-
yards purposes was and is 12.815 acres, making a total area of lands in
Kansas owned and used by said stock yards company for stock-
2106 yards purposes of 61.494 acres, besides 4.846 acres of streets and
alleys used and occupied but not owned by said stock yards
company; and besides the foregoing lands in Kansas, the said stock
yards company owns and uses for stock-yards purposes a track in
Missouri adjoining the main yards in Kansas of 37.837 acres; and
said company also uses an area of 3.871 acres of streets and alleys
east of the west line of Bell street, which it does not own, making a
grand total of land owned by said stock yards company and used

for stock-yards purposes of 99.331 acres, and 8.717 acres of streets and alleys used but not owned by said stock yards company; but said tract in Missouri embraces 7.501 acres, used exclusively for the horse and mule department (including the east one-half of Bell street, from the south line of 16th street to the south line of 17th street, .301 acre, and the east one-half of Bell street, from the south line of 17th street to the south line of said stock yards, .565 acre), and said 7.501 acres ought to be deducted from said area in Missouri, leaving only 30.336 acres remaining, because the charges of said department are in nowise affected by the act of the legislature of this State, and said department is operated separately and upon a different plan from the department for cattle, calves, hogs, and sheep—the charge being *per diem* for all services, shelter, water, and feed—and said act cannot be made applicable to said horse and mule department; and this defendant denies that about sixty-five per cent. of the earnings of said corporation are derived from its business carried on in this State, and that about thirty-five per cent. thereof is derived from its business carried on in the State of Missouri; but this defendant avers that all the business of said corporation as such is, in contemplation of law, carried on in the State of Kansas, where alone said corporation is authorized to hold real estate for its purposes, and where alone it is authorized to keep and maintain its general offices for the transaction of its business; and this defendant admits that for a very large part of this real estate the said corporation was compelled to pay large prices therefor; but this defendant denies that this was because it was absolutely necessary for its use to successfully carry on its business; but this defendant admits that
2107 the large prices paid for such part of said land was because the same was at the time of purchase occupied by a good class of buildings, which it was necessary to remove, and that the land so formerly occupied by such buildings is now being used entirely for stock-yards purposes; but this defendant avers that a large part thereof is used exclusively for the horse and mule department, as aforesaid; and this defendant avers that the investment of said stock yards company in land used for stock-yards purposes up to the year 1893 was about $330,000, including all such lands in Kansas and Missouri, but at that time said stock yards company determined to extend its yards into the business part of Kansas City, Missouri, and having no authority to condemn such land, it recklessly purchased the same at any prices that the numerous owners thereof demanded, the purchase including very many business and residence buildings and owned mostly by the occupants thereof for business and residence purposes, and these were torn down or removed in order to build barns thereon for the horse and mule department, and also for cattle pens north thereof, said land costing said stock yards company nearly $1,300,000; whereas the same quantity of adjoining land, which would have served the purposes of said stock yards company as well, could have been purchased for about one-third of that amount. This defendant admits that the improvements at the stock yards, consisting of buildings, railroad tracks, switches, viaducts, pens, and other improvements, are very

extensive and retained in a superior condition—all of them either floored with plank or paved with vitrified brick; but this defendant denies that the cattle pens alone cover about eighty acres; and this defendant avers that said cattle pens are of a capacity to handle 22,000 head of cattle daily, and this defendant admits that the corporation has hog sheds with a daily capacity of 30,000 head of hogs, and also stables for about 4,000 head of horses and mules; but this defendant denies that the sheep sheds have a daily capacity of 20,000 head of sheep, but alleges that said sheep sheds have a daily capacity of 15,000 head of sheep. This defendant admits that during the past five years the capacity of the yards of the corporation has been, to meet the growing demands of business, almost doubled, at a large expenditure of money, and that the authorized capital stock of said corporation is
2108 $7,500,000, of which $7,368,650, on December 31, 1896, had been issued; but this defendant denies that all of the same has been paid up; and as to said stock of said corporation, this defendant alleges the facts to be as follows: Said original corporation was chartered and organized in September, 1871, with a capital stock of $96,000, which was paid up, and no other stock was ever paid for except out of the earnings of said corporation, but the stock was increased from time to time by issues of stock as dividends instead of paying said dividends in cash, as follows: In 1875, $96,000; in 1876, $66,300; in 1877, $331,300; in 1878, $235,000; in 1887, $456,933; in 1890, $404,000; in 1894, $268,100; in 1896, $433,450; making total stock dividends, $2,291,083; and during the same time cash dividends were paid to the stockholders as follows: In 1872, $13,890; in 1874, $33,600; in 1875, $16,800; in 1876, $9,600; in 1877, $26,504; in 1878, $28,000; in 1879, $21,150; in 1881, $98,720; in 1882, $99,480; in 1883, $99,480; in 1884, $119,391; in 1885, $149,250; in 1886, $119,400; in 1887, $150,600; in 1888, $282,800; in 1889, $323,200; in 1890, $323,200; in 1891, $311,143; in 1892, $370,592; in 1893, $296,694; in 1894, $451,133.50; in 1895, $554,816; in 1896, $429,160.50, and February 1, 1897, $110,557.50, making a total of $4,439,161.50; and in addition to the foregoing there was, in 1883, a distribution of certain of the surplus land of the company of the value and amount of $221,815, a considerable portion of said land being purchased back by the company in 1893 and 1894 at the price of more than $30,000 per acre; and out of the cash dividends aforesaid the stockholders purchased and paid for stock as follows: In 1876, $73,000; in 1878, $42,400; in 1881, $15,000; in 1887, $535,000; in 1890, $900; in 1893, $55,100; making a total of $721,400, besides the original paid-up stock of $96,000. In addition to the foregoing, stock was issued in 1894 to the amount of $1,667,100, which was sent to the Boston financial office of the company for disposition, but at least $500,000 or the proceeds thereof remain in the financial office of the company in Boston. Said stock yards company also issued to the stockholders, in 1884, stock to the amount of $995,000, for which it received no consideration whatever, but merely doubled the
2109 amount of its capital stock and issued to the stockholders two shares instead of one; and in 1888 the company in like

manner issued stock to the stockholders, without receiving any consideration therefor, to the amount of $1,058,067. Besides the foregoing, said stock yards company issued, in 1879, to Fowler Brothers, as an inducement to locate a packing-house near the yards in Kansas City, Kansas, $40,000 of stock, and in 1893 the stock yards company issued to the Armour Packing Company stock amounting to $500,000, to induce said company to locate its beef-packing establishment in Kansas City, Kansas, near the said stock yards; and, in the several ways aforesaid, stock was issued amounting in all to $7,368,650, and this stock covers all the property of said stock yards company, whether used for stock-yards purposes or not, and said property, real and personal, including money not used for stock-yards purposes, amount in value to about $2,000.00; but as to the said donation of stock to Fowler Brothers, the stock dividends thereon have amounted to $137,081, making a total of $177,081, and besides said stock has drawn cash dividends amounting to $153,202; and as to the said $500,000 of stock donated to the Armour Packing Company, the stock dividends thereon have amounted to $60,812, so that there is outstanding on account of said original donation $560,812 of stock, and said stock has drawn cash dividends amounting to $158,817; so that there is now outstanding stock in the hands of Fowler Brothers and Armour Packing Company, on account of said donations, the amount of $737,893, notwithstanding they have received cash dividends amounting to $312,019, making a total of stock and cash dividends amounting to $1,049,912; and besides the foregoing, the stock yards company donated to Fowler Brothers, in 1879, $50,067.18 in cash and $30,500 in real estate; and also, in 1883 and 1884, to Schwarzschild & Sulzberger, $100,000 in cash; to Swift and Company, in 1883, $62,175 in real estate; to Hollis and Company, in 1884, $2,070 in real estate; to Kingan and Company, in 1887, $33,132.10 in real estate; all for like purposes, said donations being paid out of the earnings of the company, besides the dividends, or as proceeds of stock sold; and this defendant denies that the actual present value of the property of said corporation so employed for its stock yards, as aforesaid, is in excess of the
2110 value of $7,500,000; and this defendant avers that the present value thereof does not exceed $4,574,731.84 at the excessive valuations per acre following, to wit:

Main yards in Missouri, 37.837 acres, at $45,000...	$1,702,665
Main yards in Kansas, 38.625 acres, at $30,000....	1,158,750
Quarantine yards, 12.812 acres, at $12,000.....	153,780
North yards, 10.054 acres, at $23,000.....	231,242
Total value of land	$3,246,437
Value of improvements:.....	1,328,294.84
Grand total	$4,574,731.84

And the foregoing embraces all the lands and improvements used for stock-yards purposes; and this defendant avers that the amount

of money actually invested in said property is about $3,201,274.05, including grading, filling, and improvements, as follows:

Main yards in Missouri	$1,499,614.24
Main yards in Kansas	230,110.81
Quarantine yards	102,659.44
North yards	40,594.72
Total cost of land, with grading, etc	$1,872,979.21
Improvements	1,328,294.84
Grand total	$3,201,274.05

And of the cost of the land in Missouri, $1,263,362.75 was on account of the recent extension in Missouri, and the foregoing includes the horses and mule department. The present value of said property, exclusive of the horse and mule department, is about $4,214,087.98. The cost of the land in the horse and mule department was $230,643.86, and the cost of the buildings and improvements thereon $130,000, making in all $360,643.86, and this should be deducted from the amount of said investment, thus showing the cost of the property devoted to the care of cattle, calves, hogs, and sheep to be $2,840,630.19, and should also be deducted from the total present value of the property devoted to cattle, calves, hogs, and sheep, thus showing the amount thereof to be $4,214,087.98; and this defendant admits that for the year 1896 the total receipts of live stock at said stock yards were as follows:

1,714,532 cattle,
100,166 calves,
993,126 sheep,
2,605,575 hogs,
57,847 horses and mules,

making a total of all stock handled by said yards of 5,471,446,

2111 and that the gross earnings of the corporation for the year 1896 were one million twenty-three thousand eight hundred seventy and $\frac{20}{100}$ dollars ($1,023,870.20); but this defendant denies that the total expenditures were five hundred forty-nine thousand three hundred fifty-one and eighty one-hundredths dollars ($549,351.80), all of which were necessary for the operation and maintenance of the property, leaving net earnings of four hundred seventy-four thousand five hundred eighteen and $\frac{40}{100}$ dollars ($474,518.40), about six per centum on the capital stock of the corporation for that year; but this defendant avers that the total operating expenses of said stock yards company for the year 1896 were only $368,059.05, said expenses, which are shown in detail by the books of said stock yards company, being made up as follows:

For all labor that goes into the expenses of operating the yards, including the salaries and wages paid to officers and employés in the various department- and divisions, except as stated in the two succeeding entries	$211,262.19

For labor and material required to make necessary repairs on the yards, including in many cases substitution of vitrified brick for worn-out plank floors in the pens, and also rebuilding pens	32,309.22
For cleaning yards	8,116.09
For repairing wagons	212.73
For advertising, traveling expenses of agents, stationery, fuel, postage supplies, telephone service, license fees, horseshoeing, and worthless accounts charged off	66,191.65
For taxes	22,671.25
Premiums on policies of insurance	12,836.00
Rent paid for leased grounds	7,200.00
Live stock lost, injured, or damaged	1,292.77
W. S. Tough, as manager of horse and mule department	5,967.15
Total disbursements	$368,059.05

And that the net profits of said corporation for the year 1896 were $655,811.05, and this is shown by the account books of said stock yards company, which were correctly kept for said year, or nearly twelve per cent. upon $5,355,433 of stock issued for any consideration whatever, and the foregoing statement of expenditure includes the sum of $2,346.56 paid for taxes on real estate owned by said stock yards company, but not used for stock-yards purposes; and the claim set up by the complainant that the annual
2112 expenses for 1896 should be increased from $368,059.05, as shown by the books of the company, to the sum of $549,351.80 is entirely without foundation and fraudulent, such increased sum being for part of the system of general improvements and extensions commenced in 1893 and nearly completed in 1896, said improvements being charged to construction account, for which it would be proper to issue additional stock if necessary to raise funds for the purpose; and this defendant avers that said stock yards company commenced the extension of the horse and mule department late in 1892 and expended chiefly for said purpose the sum of $83,015.10 in addition to the regular annual expense of repairs for said year, and this additional sum was properly charged to construction account; and in the year 1893 a further sum of $73,192.27, in addition to the regular annual expenses, was used for the same purpose and was properly charged to construction account; and in 1894 the further sum of $242,784.89, in addition to the regular annual expenses, was invested in the extension of said yards and improvements, and this sum was likewise properly charged to construction account; and in 1895 the further sum of $116,685.23 was expended in the same manner and for the same purpose in addition to the regular annual expenses, and this sum was likewise properly charged to construction account, and in 1896 the sum of $169,584.65 was expended in a similar manner and likewise properly charged to construction account, and said additional sums

expended for the extension of the yards and improvements in 1892, 1893, 1894, and 1895 were capitalized and stock issued therefor, being part of the issue of 1894, amounting to $1,667,100, the surplus fund having been used until said issue of stock, and the said additional sum for 1896 was for improvements in every respect of the same nature as said additional sums charged to construction account in 1892, 1893, 1894, and 1895, and the reasons for a failure to capitalize said improvements for 1896 were that there was a surplus in the treasury at Kansas City in excess of said amount besides the large surplus in the Boston financial office, and the amount of stock that might be issued without amendment to the charter or filing a new charter was less than said sum, and it was intended to use the remaining stock for the purchase of certain lands north of the north yards; but all proper repairs and
2113 renewals for the year 1896 were included in the repairs account, amounting to $32,309.22, as they had been in former years, and the additional $169,584.65 was not in any respect for annual repairs or renewals, but was for the extension and completion of the permanent improvements commenced in 1892 and not yet entirely completed in 1896, and the total sum of the net profits of $655,800.05 for the year 1896 was distributed amongst the stockholders, as also a considerable part of the surplus of preceding years, and the total amount of dividends from 1884 to 1896, inclusive, is as great as the total of the net profits, as shown by the books of the company, not including said construction accounts; and this defendant denies that the yards, pens, and most of the improvements of said stock yards have to be necessarily replaced or renewed every five to seven years, costing large sums of money therefor and consuming a large amount of the yearly earnings of the said corporation; and this defendant avers that the annual repairs and renewals do not cost more than $30,000 to $35,000 per annum, and this sum is sufficient to keep and maintain the yards in good repair and condition; and this defendant admits that the charges now prescribed, exacted, and collected by the corporation and which have existed for several years are as follows: For driving, yarding, watering, and weighing cattle, 25 cents per head; calves, 10 cents per head; hogs, 8 cents per head, and sheep, 5 cents per head; but this defendant denies that such charges and prices are fair, reasonable, and just, considering all conditions and the services rendered therefor, and only furnish reasonable compensation to the said defendant corporation, and that all existing charges and prices of the corporation for hay, corn, and other grain sold or delivered by it under the conditions and circumstances in which the same are sold, delivered, and fed and the care and attention given by the corporation to cattle and other stock in its yards in connection with the sale, delivery, and feeding of hay, corn, and other grain are fair, just, and reasonable, and the operation of the stock yards under such rates, charges, and prices and the collection thereof only permit the corporation to earn a fair and reasonable compensation or interest on the present actual value of its property so necessarily occupied and used by it for stock-yards business, and such earn-

ings are about six per cent. on the money invested in
2114 said corporation after paying the operating expenses therefor, taxes, and expenses of the necessary repairs, renewals, and the maintenance of the same; and this defendant avers that such charges and prices are unfair, unreasonable, and unjust, considering all conditions and the services rendered therefor, and they furnish excessive compensation to the defendant corporation, and from the year 1871 until the year 1893 the defendant corporation never charged more than twenty cents per head for the yardage of cattle, including incidental services, but in that year it raised the rate to twenty five cents per head, and has ever since maintained said rate, and the existing charges and prices of the corporation for hay and feeding of the same are $20 per ton, although it does not cost more than $6 per ton, and the price charged for corn, oats, and other grain, including the feeding of the same, is $1.00 per bushel, notwithstanding the same can be purchased for twenty cents per bushel, and said exorbitant prices for hay and grain and the feeding of the same have been maintained for many years, and even when the prices of hay and grain were much lower than above stated, and said rates are and for years past have been so unreasonable that shippers have often fed their live stock on the train or before reaching the yards, in order to avoid the excessive and outrageous charges for feed and feeding, and thus the revenues and the profits of the defendant corporation have been reduced below the amount that said company would receive if a reasonable price only were charged therefor, and a deduction of the rates for feed and feeding, as prescribed by the statute of this State, would stimulate the demand for feed and feeding, so as to increase rather than diminish the profits of the stock yards company from that source, the said stock yards company having an entire monopoly of said business and not allowing any person to buy or sell hay or grain in the yards, and not allowing any owner or shipper of live stock to feed the same; and this defendant is not fully advised that the charges for yardage and feed at stock yards of the said corporation are the same as those of other stock yards similarly conducted, and the same as the stock yards at Saint Louis, Missouri; East Saint
Louis and Chicago, Illinois, and Omaha, Nebraska, but this
2115 defendant says that the rates at one locality may properly differ from those at another, and the proximity of the yards of the defendant company to the great corn, grain, and hay producing belt enables said company to feed live stock at a lower rate than the other points above named; and, besides this, the cheapness of the lands owned by the defendant corporation and used by it for stock-yard purposes other than said late extension of the yards would also enable said company to furnish yardage at a cheaper rate than some of the other points above mentioned; and, furthermore, such rates of other yards are probably too high and the result of combinations or secret understandings to keep up the prices and even to advance the same, notwithstanding the prices of live stock may be much lower than heretofore and the value of the service to the owner and shipper of live stock less than formerly.

This defendant admits that the defendant corporation makes no charges whatsoever on any stock that is not sold in the yards when received from railroad companies, but this defendant is not advised why it does not do so. This defendant admits that live stock is subject to the order of the owner, and is delivered to the railroads or buyers without charge to the owner, except yardage and feed charges, but this defendant avers that the loading and unloading of live stock is a duty devolving upon the carrier for which no extra charge can properly be made to the owner or shipper of the stock; and this defendant admits that said stock yards so owned and operated by said corporation have been and are of great pecuniary value and benefit to the stock raisers and shippers of Kansas, Missouri, and adjacent States, but this defendant avers that such stock raisers and shippers are entitled to the benefit of a market at some convenient point on the Missouri river, and such would necessarily be furnished in any event; and this defendant admits that the location and operation of the stock yards of said corporation in this State and in Kansas City, Missouri, in connection with other causes, have induced large packing establishments to locate in Kansas City, Kansas, for the purpose of buying, killing, and packing cattle and other stock, thereby furnishing an excellent and convenient market to stock raisers and shippers of Kansas, Missouri, and adjacent States, but this defendant avers that such facilities for handling and slaughtering live stock would be
2116 furnished at some central point along the Missouri river, whether the defendant corporation had ever existed or not; and this defendant further avers that he is not advised, otherwise than by said bill, that fat cattle sold in Kansas City in 1896 netted an average of 9¾ cents per hundred pounds more than the same stock sold in Chicago the same day, and that hogs netted nine cents more, and sheep seventeen cents more; but this defendant avers that said allegations, if true, are entirely immaterial, as the stock raisers and shippers are under no obligation to ship their live stock a distance of 500 miles further than necessary and incur the shrinkage thereby in order to find a market which would certainly be afforded at some convenient point on the Missouri river, whether the defendant company had ever existed or not; and this defendant is not advised, otherwise than by said bill, that the importance of the stock market at Kansas City to the producers and stock raisers and shippers of Kansas has been greatly increased by the successful operation of the large and extensive stock yards of said corporation at and near Kansas City, Kansas, and at and near Kansas City, Missouri, but this defendant avers that the stock raisers and shippers of Kansas are entitled to the benefit of a market, however the same may be produced or created, and are under no obligation to pay excessive rates to the defendant corporation because of the location of its yards at a central point in the Missouri valley and near a considerable city.

And, further answering, this defendant saith that he admits that Charles F. Morse, defendant, is a director, vice-president, and general manager of the Kansas City Stock Yards Company and a

resident and citizen of the State of Missouri, but he denies that said Charles F. Morse is the only managing director thereof; and he also admits that at the present time, in consequence of the absence of the president of said corporation in Europe, said Charles F. Morse is also the acting president thereof; but this defendant denies that said Charles F. Morse has full authority to fix the rates and prices to be charged by said stock yards company; and
2117 defendant admits that Harry P. Child is the assistant general manager of said corporation and a citizen and resident of the State of Missouri; that Eugene Rust, defendant, is the general superintendent of said corporation and a resident and citizen of the State of Missouri; that Elliott E. Richardson is the secretary of said corporation and a resident and citizen of the State of Kansas, and of the first division of said district, and that Louis C. Boyle, as attorney general of the State of Kansas, is a citizen and resident of the State of Kansas and an inhabitant of the first division of said district and the duly elected, qualified, and acting attorney general of said State.

This defendant, further answering, saith he admits that on the 3rd day of March, 1897, Honorable John W. Leedy, as governor of the State of Kansas, approved a certain act of the legislature of said State known as "committee substitute for house bill No. 87," and entitled "An act defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating all charges thereof, and removing restrictions in the trade of dead animals and providing penalties for violations of this act;" that in the said act it was provided the same should take effect and be in force from and after its publication in the official State paper of the State of Kansas; that a certified copy of the said act is attached to the said bill of complaint, marked "Exhibit A," and made a part thereof, to which reference is made in said bill as if fully incorporated therein, but this defendant avers that the word "preseribing" in the title of said bill, as shown by said copy, is erroneous, the word used in said title being "providing;" and this defendant admits that said act was published in the official State paper of the State on the 12th day of March, A. D. 1897; and this defendant is not advised otherwise than by said bill that said act is now by the defendant Louis C. Boyle, as attorney general of the State of Kansas, alleged to be in full force, virtue, and effect as a valid law of the State of Kansas; and this defendant avers that he never had occasion to allege anything of the foregoing nature, and the force and virtue of said act is not dependent upon the allegation of this defendant or any other person; and
this defendant admits that said act provides, among other
2118 things, that "It is hereby made the duty of the attorney general to prosecute all violations of the provisions of this act."

This defendant, further answering, saith that he denies that said act approved March 3, 1897, and heretofore referred to as Exhibit "A," is unconstitutional and void under the provisions of the Constitution of the United States, and particularly under the 3rd clause

of section 8, article 1, and this defendant is not advised that there is any article 8 in the original Constitution of the United States; and this defendant avers that the provisions of the 5th amendment to the Constitution of the United States were intended as limitations upon the power of the Federal Government and not as restrictions upon the authority of the States; and this defendant denies that said act is unconstitutional under the 14th amendment to the Constitution of the United States; and this defendant denies that neither the legislature of the State of Kansas nor the State of Kansas has power to enact or enforce said act or any of the provisions thereof so as to include or apply to the Kansas City Stock Yards Company, nor any legislative power or other authority to define the duties of the said corporation in carrying on and operating its business, or any legislative power or other authority to regulate the charges of said corporation for services rendered by it to *to* stock-shippers or other persons; but this defendant avers that the State of Kansas by its legislature had full power and authority to pass and publish said act, and now has full power and authority to enforce the same; and concerning the legislative power or other authority to abridge in any manner the rights, privileges, and immunities of said stock yards company, this defendant avers that said company is a corporation of the State of Kansas and not entitled to the rights, privileges, and immunities of a citizen of the United States; and this defendant denies that there is no legislative power or other authority to prescribe any penalties whatever for the violation of said act or any of its provisions; but this defendant avers that the State, through its officers and departments, has full power and authority to prescribe such penalties and to enforce the same.

This defendant, further answering, saith that he denies
2119 that said act approved March 3, 1897, is unconstitutional and void, as contrary to and in conflict with the Constitution of the United States, and especially as contrary to and in conflict with the provisions of the 14th amendment thereof, in this, to wit, that it denies to the Kansas City Stock Yards Company, within the jurisdiction of the State of Kansas, the equal protection of the laws, in that by its provisions it is made to apply only to such stock yards within the State "into which live stock is received for the purpose of exposing or having the same exposed for sale or feeding and doing business for a compensation, and which for the *twelve* preceding twelve months shall have had an average daily receipt of not less than 100 head of cattle or 300 head of hogs or 300 head of sheep," in that by such provision it singles the Kansas City Stock Yards Company out of all the other citizens and corporations within the State of Kansas without giving to such corporation any specific or corresponding benefit therefor, and restricts the application of said act to the Kansas City Stock Yards Company alone, there being no other stock yards operated in the State of Kansas except the defendant corporation, which for the preceding twelve months has "an average daily receipt of not less than 100 head of cattle or 300 head of hogs or 300 head of sheep;" and this defend-

ant avers that if the facts alleged were true, yet they constitute no valid or legal objection to the validity of said act; and this defendant denies that while said act in controversy does not specifically name the Kansas City Stock Yards Company, it so described it that there can be no possible doubt with regard to the attempted exclusive application of the said act to the said defendant corporation, and this is substantially the same as naming the said corporation in the said act; but this defendant avers that whether or not any other stock yards company comes at present within the terms of said act, yet said act is of a general nature and broad enough to and will include every such stock-yards corporation being at present or hereafter coming within its terms; and as to the said allegation that said act not only attempts to fix the charges of said corporation for driving, yarding, watering, and weighing stock, but also attempts to fix the prices at
2120 which it may sell and deliver hay, corn, and other grain, and therefore said corporation is not treated as other owners and operators of stock yards within the State are treated, and which for the preceding twelve months have a less "average capacity than 100 head of cattle or 300 head of hogs or 300 head of sheep," this defendant, while admitting the same, denies that the facts stated constitute any legal objection to the validity of said act; and as to the allegation that said corporation is not treated as other corporations or persons are treated who are engaged in selling and trading in personal property, nor treated equally with such other corporations or persons, this defendant avers that it is treated the same as all other corporations of the same character coming within the terms of the act, and that said corporation has an entire monop-ly of the yardage and feeding of all live stock passing into or through Kansas City by railroad, and no other person or corporation can either sell feed at its yards nor can owners or shippers feed their own stock at said yards, and the business of said stock yards company is affected with a public interest, and it has an entire monopoly of the yardage and feeding of cattle at Kansas. This defendant denies that said act is strictly class legislation arbitrarily made and enacted to discriminate against the defendant corporation and the complainant and other stockholders of the said corporation, and denies that it prevents such corporation from being treated as other stock-yards corporations are treated and as other corporations and persons are treated engaged in the same business in the State under like conditions and circumstances.

This defendant, further answering, saith that he denies that the act approved March 3, 1897, is unconstitutional and void as contrary to and in conflict with the provisions of the Constitution of the United States, and especially as contrary to and in conflict with the provisions of the 5th and 14th amendments thereof, in this, to wit, that thereby the State of Kansas is attempting to deprive the Kansas City Stock Yards Company and the complainant as a stockholder therein of liberty and property without due process of law and without just compensation therefor; and this defendant avers that said 5th amendment to the Constitution of the United

States can have no application to this case for the reasons
2121 hereinbefore stated; and this defendant denies that said defendant corporation is entitled, if it can do so in the operation of its business, to earn a fair and reasonable compensation or interest yearly on the present actual value of its property, and he denies that the present actual value thereof exceeds the sum of $7,500,000, and he denies that if said act is or shall be applied to all the business of said corporation and its provisions thereof shall be enforced against said defendant, its officers, agents, and servants, then the legislature of the State of Kansas and said State have unlawfully assumed the right and illegally attempted to exercise the right to reduce the rates and charges for said corporation for the driving, yarding, watering, and weighing of cattle in this State, and also abridging, restricting, and limiting said corporation in the prices at which it may sell and deliver hay, corn, and other grain, so as to diminish and reduce its charges, rates, revenues, and earnings in such a manner and to such an extent as to prevent it and the complainant and the other stockholders therein from earning, receiving, or obtaining a reasonable per cent. for the money invested in said corporation, and preventing said corporation and the complainant and other stockholders therein from earning, receiving, or obtaining a reasonable or fair compensation or dividend upon the present actual value of the property of said corporation, and he denies that the enforcement of the provisions of the said act against the defendant corporation will reduce the receipts of said corporation yearly to the amount of over $309,000, which reduction, with the necessary continuing costs of renewals of its yards, pens, and other improvements, will leave no fair and reasonable compensation to the said corporation, nor any dividends or interest or compensation to the complainant or to the other stockholders of said corporation, and will destroy the value of the stock of the complainant and the stock of the other stockholders of said corporation and the value of the property of said corporation, and render the same worthless; and if said act is enforced against said corporation it deprives said corporation and all stockholders therein, including the complainant, of their property as completely as by a special act expressly providing for its depreciation, confiscation, and destruction; but this defendant
2122 avers that instead thereof the business of said corporation will be largely increased in volume by the application of the rates prescribed by said act, and especially by the feeding of cattle at the yards, so that the profits of the company will be diminished but little, if at all, and even without the increase of any part of the business, and allowing the expenditures to be as great as heretofore and without any diminution thereof, said corporation will be able to make a fair dividend both upon its legitimate and illegitimate stock, and a large dividend upon its legitimate stock and still larger upon the present actual value of the property, and a very large dividend upon the amount of money actually invested, even without eliminating and separating therefrom the horse and mule department; but this defendant avers that neither the amount invested in the horse and mule department nor the revenues nor the ex-

penses thereof should be taken into account for the reasons hereinbefore stated; and if the cost of the property, exclusive of the horse and mule department, be taken at the value of $3,114,564.56 and the present value thereof, $4,650,206, and the net earnings, exclusive of the horse and mule department, at $342,116.21, then, if the statutory rates be applied to the business of 1896, the rate per cent. on the cost price of the yards would be 10.98 per cent., and on the present value of the yards, 7.35 per cent.; and in the foregoing estimates nothing is deducted by reason of the proportion of the annual expenses properly chargeable to the horse and mule department, including the general office expenses and salaries of officers, fire protection and fire insurance, water, electric light, or damages for lost or injured stock.

This defendant, further answering, saith that he denies that said act approved March 3, 1897, is unconstitutional and void as contrary to and in conflict with the provisions of the Constitution of the United States and of the State of Kansas, and especially as contrary to and in conflict with the provisions of article 8 of the original amendments to the Constitution of the United States; and this defendant avers that said article 8 of the amendments can have no application to this case, the provisions thereof being intended as limitations upon the power of the Federal Government, and
2123 not as restrictions upon the authority of the States; and he denies that said act is in conflict with the provisions of section 9 of the bill of rights of the constitution of Kansas, in this, to wit, that said act permits the infliction of cruel and unusual punishments; that the last clause of section 7 of the said act provides that any person or persons violating the provisions thereof shall be deemed guilty of misdemeanor, and upon conviction thereof "for each subsequent offense he or they shall be fined in any sum not less than $1,000 and by imprisonment in the county jail not less than six months," but the maximum fine and imprisonment is not fixed, thereby permitting fines for each subsequent offense therein referred to — be of any amount exceeding $1,000, and the infliction of imprisonment for any period of time exceeding six months, thereby authorizing and requiring the infliction for each subsequent offense referred to of excessive and unusual fines and of cruel and unusual punishments, such fines and imprisonment being wholly unlimited; and this defendant avers that the maximum punishment in such cases is fixed by section 293 of the crimes act, as published in the General Statutes of 1868, chapter 31, or in the General Statutes of 1889, as section 427, and being general paragraph 2567, said maximum being twelve months' imprisonment in the county jail or $1,000 fine, the full section being as follows: "Whenever any offender is declared by law punishable upon conviction by confinement and hard labor, or by imprisonment in a county jail, or by fine, or by both such fine and imprisonment, and no limit is fixed by law to the duration of imprisonment in the jail, or to the fine, in such cases the convict shall in no instance be sentenced to a longer term of imprisonment in a county jail than twelve months, nor shall the fine in any such case exceed one thousand dollars;" and this de-

fendant denies that such fine or imprisonment, or both, would be a "cruel and unusual punishment" in any event; and this defendant denies that said last-mentioned clause of section 7 of said act is also unconstitutional and void in this, to wit, that it is contrary to the provisions of the Constitution of the United States in that it leaves to judicial discretion, without any limitation, the infliction of punishment for each subsequent offense therein referred to by excessive fines and cruel and unusual punishments; and
2124 this defendant avers that any injustice to a defendant is effectually prevented by said act of March 3, 1897, and in said section 293 of the crimes act of 1868.

This defendant, further answering, saith that he denies that said act approved March 3, 1897, a copy of which is attached to the bill of complaint as Exhibit "A" and made a part of said bill, is unconstitutional and void, in this, to wit, that said act never passed the legislature of the State of Kansas properly, legally, or constitutionally, but he admits that on January 15, 1897, a certain bill, known as number 87 and entitled "An act to regulate stock yards and providing punishment for a violation thereof," was introduced in the house of representatives of the State of Kansas by a member thereof and was then read for the first time; and admits that said bill was read a second time and referred to the committee on live stock, but avers that said second reading was on January 18, and denies that it was on January 17, 1897; and this defendant admits that on February 3, 1897, the chairman of that committee reported to the house of representatives a "committee substitute for house bill No. 87," but denies that said substitute was entitled "An act to regulate stock yards and providing punishment for a violation thereof," but this defendant avers that the title of the substitute bill was as follows: "An act defining what shall constitute public stock yards, defining the duties of the person or persons operating the same and regulating all charges thereof, and removing restrictions in the trade of dead animals, and providing penalties for violation thereof;" and this defendant denies that said "committee substitute for house bill No. 87" had the same title as the original bill No. 87 aforesaid; and this defendant avers that said substitute bill was then printed by the State printer and was distributed among the members of both houses, the title being just as when introduced by the committee on live stock and next above given; and this defendant is not advised otherwise than by said bill that "committee substitute for house bill No. 87" was treated in the house of representatives more as new matter than as substitute, but he denies that it was read a first and second time in said house with the same title as the
2125 original bill and then referred to the committee of the whole house, but avers that it was read the first and second time in the house with the title of the substitute bill, as hereinbefore stated and fully quoted, and was then referred to the committee of the whole house; and this defendant denies that at each of its stages as it progressed through said house the title to said "committee substitute for house bill No. 87" is given in the journal and record of said house as "An act to regulate stock yards and providing pun-

ishment for a violation thereof," being the same title as house bill No. 87, as aforesaid, but this defendant avers the fact to be that in committee of the whole house the title was amended by striking out the final word "thereof" and inserting in its place the words "of this act," so as to read as it afterward appeared in the enrolled bill now published as chapter 240 of the Session Laws of 1897, and since said amendment in committee of the whole the title has never been otherwise than as in the enrolled bill and the published statute; and this defendant denies that said house bill No. 87 and said "committee substitute for house bill No. 87" never had any other title in said house or in the journals or records thereof than as follows: "An act to regulate stock yards and providing punishment for a violation thereof;" but this defendant avers that said original house bill No. 87 and the substitute thereof never had the same title and said substitute bill never had the title "An act to regulate stock yards and providing punishment for a violation thereof;" and this defendant avers that on February 25 the committee recommended the bill for passage, and on February 27 the committee on engrossed bills reported that said bill was properly engrossed, and said engrossed bills had the same title that now appears in the enrolled bill and in the statute book, and on March 1, 1897, the bill passed the house of representatives by a vote of 109 yeas, 1 nay, and absent or not voting 15, and on the same day the senate was notified of the passage of the bill by the house with the title just as the same appeared in the engrossed bill and as now appears in the enrolled bill and in the statute book; and this defendant denies that after the said bill and substitute entitled "An act to regulate stock yards and providing punishment for a vio-
2126 lation thereof" was passed by the house it was then sent to the senate of the State of Kansas with the following title: "An act to regulate stock yards and providing punishment for a violation thereof;" and this defendant avers that the bill or proposed act entitled "An act to regulate stock yards and providing punishment for a violation thereof" did not pass either house of the legislature, and this defendant denies that the said bill and substitute aforesaid was called up for passage in the senate, an emergency declared by a vote taken therefor, and the bill read a second and third time by title as follows: "Committee substitute for house bill No. 87, an act to regulate stock yards and providing punishment for a violation thereof;" but this defendant avers that said bill was read in the senate with the same title as appeared in the engrossed bill and now appearing in the enrolled bill and in the statute book; and this defendant denies that after several amendments which were improperly, irregularly, illegally, and unconstitutionally made and adopted thereto the said bill and "committee substitute for house bill No. 87" passed the senate with the title, "An act to regulate stock yards and providing punishment for a violation thereof;" but this defendant avers that in the senate certain amendments were properly made to the body of the bill, but no change was made in the title, and said bill, with the title as appearing in the engrossed bill and as now appears in the enrolled bill and in the

statute book, was properly passed by the senate on March 2, 1897, by a vote of 28 yeas, 8 nays, and 3 absent or not voting; and this defendant denies that said bill and "committee substitute for house bill No. 87" never had any other title in said senate or in the journal or records thereof than as follows: "An act to regulate stock yards and providing punishment for a violation thereof," but this defendant avers that the proposed act having said title was never in the senate and never in the house of representatives after the introduction of said substitute bill, on February 3, and on the same day the house was notified of the passage of the bill, with amendments, by the senate, and the house concurred in the senate amendment by a vote of 102 yeas, 2 nays, and 21 absent or not voting, and the bill passed; and this defendant denies that neither the house of
2127 representatives nor the senate of the State of Kansas ever adopted or agreed to the following title, to wit: "An act defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating all charges thereof, and removing restrictions in the trade of dead animals, and providing penalties for violations of this act," which now appears in the official publication of said act, made, as aforesaid, on the 12th day of March, 1897; but this defendant avers that said act passed each house of the legislature with the title as now appearing in the enrolled bill and in the statute book, and on March 3 the house committee on enrolled bills reported the bill as correctly enrolled and that it had been properly signed by the president and secretary of the senate and the speaker and chief clerk of the house and was presented to the governor for his signature March 3, 1897, and in this report, which is copied in full on the journal, the title is stated just as it appears in the enrolled bill and in the statute book; and this defendant denies that said "committee substitute for house bill No. 87" never passed the legislature of the State of Kansas with the title of "An act defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating all charges thereof, and removing restrictions in the trade of dead animals, and providing punishment for violations of this act," or any similar title; and this defendant denies that said title is wholly unauthorized and without any force or effect because the same was inserted or substituted improperly, illegally, and unconstitutionally, without the consent of the senate and the house of representatives of the State of Kansas, for the title, "An act to regulate stock yards and providing punishment for a violation thereof;" and this defendant avers that the title of said act was never in any manner changed after the slight change made in committee of the whole house on February 4, 1897, and no substitution of title was ever made; and this defendant denies that "committee substitute for house bill No. 87" passed the legislature of the State of Kansas with the title of "An act to regulate stock yards and providing punishment for a violation thereof," and denies that said "committee substitute for house bill No. 87" has never been properly or
2128 legally enrolled or approved by the governor or published in the official paper of the State of Kansas with its proper

title, but this defendant avers that said "committee substitute for house bill No. 87," with the title as now appearing in the enrolled bill and in the statute book, properly passed both houses of the legislature, and on March 3, 1897, was properly approved by the governor and was duly published; and this defendant denies that the said act now published as "An act defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating all charges thereof, and removing restrictions in the trade of dead animals, and providing punishment for violations of this act" was never passed, adopted, or enacted by the legislature of the State of Kansas according to the provisions of the constitution thereof, but this defendant avers that said act with said title was properly and constitutionally passed and approved; and this defendant denies that the enforcement or any attempt to enforce the provisions of the said act of March 3, 1897, by the defendants or either of them would be contrary to and in conflict with the 14th amendment of the Constitution of the United States and various provisions of the constitution of the State of Kansas, because the said act is wholly illegal, unconstitutional, and void and of no force and effect whatever, as a law or otherwise, but this defendant avers that the enforcement of said act would be in harmony and not in conflict with the 14th amendment to the Constitution of the United States nor to any provision of the constitution of the State of Kansas, and that said act is wholly legal, constitutional, and valid and in full force and effect as a law of the State of Kansas.

This defendant, further answering, saith that he denies that said act approved March 3, 1897, is unconstitutional and void as contrary to and in conflict with the provisions of the Constitution of the United States and especially as contrary to and in conflict with the provisions of the 5th and 14th amendments thereof because it is an illegal effort to interfere with the lawful rights, powers, and privileges of the defendant corporation having the right and power to seek and obtain such compensation as it properly can for
2129 the use of its own property and the sale of proper articles, and is also an illegal effort to interfere with and abridge the lawful rights, powers, privileges, and immunities of the complainant and the other stockholders of the defendant corporation who are seeking and trying to obtain by having invested in said stock such compensation as they legally can for the use of their own money and property, and therefore said act is nothing less than an effort by the legislature of the State of Kansas and the State of Kansas to regulate the private business of a private corporation and of private individuals and to limit, abridge, and destroy the compensation which the said corporation may legally exact and collect for the use of its own property and for its stockholders, and said act and the provisions thereof have not been and are not now exercised and are not proposed to be exercised by said State in any manner involving the public health or the public morals or any other legitimate police power; and this defendant avers that said 5th amendment is not applicable herein for the reasons hereinbefore stated, and said stock yards company, having embarked in a business in which the

public has an interest and having an entire monopoly thereof at Kansas City, its business is subject to regulation by the State of Kansas, and said defendant corporation has no right to exact exorbitant compensation for the use of its pens nor for feeding live stock while confined therein, and its charges heretofore have been unjust, unreasonable, exorbitant, and oppressive and the limitation of such charges is within the legitimate police power of the State and the same has been exercised reasonably by the legislature of this State by the provisions of said act.

This defendant, further answering, saith that he denies that said act approved March 3, 1897, and all of the various sections thereof are unconstitutional and void as contrary to and in conflict with the 3rd clause of section 8, article I, of the Constitution of the United States, which confers upon Congress power to regulate commerce with foreign nations and among the several States, and the several acts of Congress passed in pursuance thereof, in this, to wit, that the said Kansas City Stock Yards Company, defendant, owns and operates extensive and costly stock yards, as aforesaid, in the county of Wyandotte and State of Kansas, in the vicinity of the mouth
2130 of the Kansas river, in and near to what is known as Kansas City, Kansas, and in Jackson county, in the State of Missouri, and in and near to what is known as Kansas City, Missouri; and said yards in both States have all the usual and necessary conveniences for the reception, driving, feeding, and shipment of cattle and other stock, and in carrying on its business and operating its yards it receives almost daily not only from this State and from the State of Missouri, but also from Texas, Colorado, Nebraska, and twenty-three other States and Territories great numbers of cattle and other stock, which are transported by the railroads to the said defendant corporation for care, feeding, and shipment in this State and Missouri, and when so transported by the railroads of the several States and Territories to the yards of the defendant corporation in this State and in the State of Missouri they are yarded, fed, cared for, sold, and shipped; that the yards in the State of Kansas and Missouri are so connected and carried on that the cattle and other stock go from one State to the other in said yards and are driven to and from the said yards in both States as the business of the stock raiser and shipper demands and as the rules and regulations of the stock yards company require; that very frequently cattle so received from the States of Missouri and Kansas and also from the other States aforesaid are shipped from the yards of defendant to Chicago, in the State of Illinois, and also to other cities and States outside of the States of Kansas and Missouri; that the said business of the said corporation is not carried on exclusively within the limits of the State of Kansas, but, as aforesaid stated, also within the State of Missouri and other States; that said yards, railroad tracks, switches, and other property of the said corporation are a part of commerce itself, are necessarily connected with interstate commerce, and that the said defendant is engaged in interstate commerce, and the provisions of said act affect commerce and amount to a regulation of it within the meaning of the Constitution of the United

States, and therefore the provisions of the said act belong to that class of powers which cannot be exercised by the legislature of Kansas or by the State itself or by any other State of the Union; and this defendant avers that no part of the business of the defendant corporation which is affected in any manner by said act
2131 is commerce, said act relating only to the charges of said company for the use of its pens and incidental services and for the feeding of live stock, including the feed furnished; that said stock yards company neither owns, operates, nor uses any railway motive power or rolling stock, nor has any interest in the transportation of live stock to or from its yards, and it has no interest in the sales of live stock and takes no part in negotiating them; and the feeding of live stock, including the furnishing of feed, is not commerce; and said stock yards company does not handle or dispose of feed as a commercial transaction, but it keeps the same on hand so that it may feed the stock and derive large profits therefrom, no one being permitted to sell or feed hay or grain in the stock yards, the company reserving to itself the privilege of furnishing feed for and performing the services of feeding the live stock as a monopoly, and no owner or shipper of live stock can obtain or use feed except by ordering the same from said company at any price fixed by it, the feed being delivered and fed to the animals wherever they may be in the yards, and price of said feeding, as well as the yardage, being kept and retained by the stock yards company out of the proceeds of sales where such sales are effected, or as advance charges paid by any railroad company which may transport such animals from said yards to other markets in the same manner as other advance charges are ordinarily paid by railroad companies; and said stock yards company does not, in a legal or commercial sense, sell any feed, but the owner or shipper of cattle, calves, hogs, or sheep order feed to be given to such animals, and said stock yards company fixes its own price for the service of feeding, including the furnishing of the feed; and this defendant avers that said act of the legislature does not purport to govern yardage and feeding charges outside of the State of Kansas, but the Kansas City Stock Yards Company being wholly and solely a Kansas corporation and entitled by law only to keep its general offices and to transact its business within this State, the legislature of Kansas may legally and properly reasonably regulate its yardage and feeding charges, although said company may for its own convenience yard and care for some of the native cattle on the Missouri side of the State line; and under the laws of this State (never complied with by said corporation) it is required to file annually
2132 in the office of the secretary of state of this State a report and statement of its condition, with all the receipts and expenditures of the company for the year next preceding; and this defendant avers that said act of the legislature affects only the charges of said corporation for yardage and feeding cattle, calves, hogs, and sheep in like manner as the charges of the keeper of a feed-stable for stall-room and feeding might be regulated by the legislature if the business of such keeper were of a public nature

and affected by a public interest. This defendant avers that the business of said stock yards company, in so far as it relates to the yardage and feeding of cattle, calves, hogs, and sheep, with the incidental services connected therewith, is of a public nature affected with a public interest; and said company has an entire monopoly of said business at Kansas City, there being no other stock yards at said place, neither for many miles round about; and this defendant further avers that there is no act of Congress, general or special, in any way prescribing, regulating, or limiting the charges of said stock yards company for the yardage and feeding of cattle, calves, hogs, and sheep, or any of them, and the incidental services connected therewith; and said act of the legislature does not in any manner conflict with the power of Congress to regulate commerce with foreign nations and among the several States or with any act of Congress relating to that subject, the business of said stock yards company, so far as affected by said act of the legislature, being only to keep feed-lots for hire, and, as an incident thereto, to feed the cattle, calves, hogs, and sheep for compensation while in the lots.

This defendant, further answering, saith that he denies that said act approved March 3, 1897, and all of the various sections thereof are contrary to and in conflict with the provisions of an act of Congress approved May 29, 1884, entitled "An act for the establishment of a bureau of animal industry to prevent exportation of diseased cattle and to provide means for the suppression and extirpation of pleuro-pneumonia and other contagious diseases among domestic animals," and of an act of Congress approved August 8, 1894, making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1895, and the
2133 regulations concerning cattle transportation made and promulgated in accordance with the provisions of said acts of Congress aforesaid by the Secretary of the United States Department of Agriculture, at his office in Washington, District of Columbia, on January 27, 1896, in this, to wit, that under the provisions of section 4 of said act referred to as Exhibit "A" it is expressly provided that "there shall be but one yardage charged," and it is further provided therein that "for driving, yarding, watering, and weighing cattle 15 cents per head" may only be charged, demanded, and collected by the defendant corporation for doing such services in the State of Kansas; that under the said regulations concerning cattle transportation so made and published by the Secretary of the United States Department of Agriculture, places, pens, and grounds are separately set apart by the defendant corporation, in the county of Wyandotte and State of Kansas, in the vicinity of the mouth of the Kansas river, consisting of about forty acres of land called "quarantine grounds," where cattle transported by rail to the defendant corporation between the 15th day of February and the 15th day of November of each and every year from the area south of or below the Federal quarantine line legally established and designated under the acts of Congress aforesaid are unloaded to be watered, fed, cared for, and sold for slaughter or shipped therefrom, as provided by the said regulations of the United States De-

partment of Agriculture; that large numbers of cattle are so transported yearly to and unloaded in said places, pens, and grounds so set apart by the defendant corporation in accordance with said regulations concerning said cattle so transported, and that such cattle must be placed in separate yards, pens, and grounds and no other cattle admitted thereto; that the same must be kept carefully cleansed and disinfected at great cost, as provided by the regulations concerning such cattle so transported; that to water, feed, and take care of cattle and other stock in the places, pens, and grounds so kept by the defendant corporation for quarantine purposes the prices fixed in section 4 of said act referred to as Exhibit "A" are wholly insufficient and not compensatory for the services, attention, and yardage absolutely necessary to comply with the said regulations aforesaid; and if
2134 *if* the said defendant corporation is restricted to the maximum prices fixed in said section 4 of said act, then said cattle so transported by rail from said area south or below said Federal quarantine line cannot be properly fed, watered, cared for, and yarded by the defendant corporation in accordance with the requirements of such regulations, as aforesaid stated, and therefore, on account of the maximum charges and prices fixed in said section 4 of said act to be collected for yardage, and the prices to be charged under section 5 of said act for hay, corn, and other grain, if enforced against the said corporation, it might be compelled to refuse to permit cattle to be unloaded for feed, water, care, attention, yardage, sale, and shipment, as aforesaid, in its special places, pens, and grounds so set apart for the reception of said cattle, and the provisions of said act therefore interfere with the carrying out of the regulations aforesaid concerning said cattle transportation and the acts of Congress aforesaid, and will deprive the said defendant corporation and the complainant and the other stockholders of said corporation from obtaining reasonable, fair, and just compensation for the yardage and feeding of said cattle so transported through the State of Kansas from the area south of and below the Federal quarantine line aforesaid, and will also prevent and forbid owners and shippers of such cattle from having sufficient, convenient, and proper quarantine grounds in the county of Wyandotte, State of Kansas, where said cattle may be fed, watered, cared for, sold, or shipped in accordance with the said regulations concerning cattle transportation; and this defendant avers that said acts of Congress, the regulations prescribed by the Secretary of Agriculture, and the statutes of this State are all intended to operate concurrently and to prevent the spread of infectious and contagious diseases among domestic animals, and this State, through its legislature, has fully co-operated with the plans and methods of the Commissioner or Secretary of Agriculture for the extirpation of pleuro-pneumonia and other contagious, infectious, or communicable diseases among cattle, as suggested and indicated in section 3 of said act for the establishment of a bureau of animal industry, etc., and the quarantine yards referred to are the cheapest part of the grounds

occupied by the defendant corporation for stock-yards pur-
2135 poses, and Texas or other southern cattle originating south of the Government quarantine line can be yarded, fed, and cared for at as cheap a rate as native cattle can be yarded, fed, and cared for, if not cheaper, and no difference has ever been made by said stock yards company in the yardage and feed charges between quarantine cattle and native cattle, and the regulations of the Federal Government relate only to sanitary measures which it is as much to the interest of the stock yards company as of all shippers of stock to enforce and carry out, and it is no more expensive to properly clean and care for said quarantine yards than for that part of said yards occupied by native cattle, and the yardage and feed charges prescribed by said act of the legislature are ample as compensation for the accom-odations, services, and feed furnished by said stock yards company; and this defendant further avers that said stock yards company has never on any occasion heretofore charged for more than one yardage of the same animal, and the provision of section 4 of said act of the legislature that "there shall be but one yardage charged" is only a statutory rule based upon the invariable custom of said stock yards company heretofore existing.

This defendant, further answering, saith that he admits that by section 8 of said act referred to as Exhibit "A" it is made the duty of said Louis C. Boyle, as attorney general of the State of Kansas, to prosecute all of the violations of the provisions of said act; but this defendant is not advised otherwise than by said bill that the complainant fears that the said attorney general may cause the defendant corporation and any and all of its officers and agents who shall violate any of its provisions to be arrested and prosecuted; and this defendant is not advised otherwise than by said bill that the complainant fears that the attorney general will attempt to enforce said act through the courts of Wyandotte county, Kansas, and through the courts of the State of Kansas by a multiplicity of criminal actions or proceedings against it and every person failing or refusing to comply with the provisions thereof, including said defendant corporation and its officers and agents, thereby greatly harass-
ing and annoying said defendant corporation and its
2136 officers and agents and causing them great expense and consuming valuable time unless said defendant corporation, its officers and agents, shall put in force at once the said charges and prices specified in said sections 4 and 5 of said act and shall obey and carry out all of the terms and provisions of said act and each section thereof, and this defendant is not advised otherwise than by said bill that the complainant fears that the said Louis C. Boyle, as attorney general, will proceed at once to carry into force said arrests and prosecutions unless immediately restrained by the order and injunction of this honorable court, and this defendant denies said several allegations as to the fears of said complainant; and this defendant avers that he has no personal or private interest in this controversy, and no other corporation, body politic, or person named as a party to this action has any interest whatever therein except the Kansas City Stock Yards Company and those identified with it

in interest, and the State of Kansas is the only body politic, corporation, or person having an interest adverse to said stock yards company and those identified in interest with it, and this court cannot have jurisdiction of this controversy until the State of Kansas can and shall be made a party thereto, and so this defendant says that this court has no jurisdiction of this action, and that an assumption of jurisdiction by it is contrary to and forbidden by the 11th amendment to the Constitution of the United States, under the averment of said bill that the complainant is a citizen of the State of Massachusetts.

This defendant, further answering, saith that he is not advised otherwise than by said bill whether it be true or not that heretofore, to wit, on the 12th day of March, 1897, the Kansas City Stock Yards Company, and also Charles F. Morse, a director, vice-president, and general manager of said corporation, and also at present the acting president of said corporation, on account of the passage of said act by the legislature of the State of Kansas and the heavy penalties therein provided and the fear that said Louis C. Boyle, as attorney general aforesaid, will at once proceed to arrest and prosecute said corporation and its officers and employés, and to save the defendant corporation, its officers, agents,
2137 servants, and employés, from being so arrested, harassed, and annoyed by the said Louis C. Boyle, as attorney general, in attempting to enforce the provisions of said act, informed the complainant, as such stockholder as aforesaid, that the provisions of the said act would be applied by the defendant corporation, its officers and agents, to the operation of its yards in the State of Kansas, and that all the provisions therein contained concerning charges for yardage or otherwise and all the prices for the sale and delivering of hay, corn, and other grain therein fixed would be observed and carried out in the State of Kansas, and that said act and all the terms thereof would be observed and obeyed by the said defendant corporation, its officers and agents, and also informed complainant that on the 13th day of March, 1897, the prices fixed in said section 4 of said act would be at once ordered to put in force in the operation of the yards and the property of said defendant corporation in the State of Kansas; that no greater prices would be demanded, exacted, or collected for driving, yarding, watering, and weighing cattle and other stock than as therein specified, and also that said defendant corporation, its officers and agents, would sell and deliver in the State of Kansas, at the prices fixed in said section 5 of said act, hay, corn, and other grain at the prices, terms, and weight specified in said section 5 of said act, and also would in all other ways comply with the provisions of the said act because of the heavy fines and penalties therein provided and because of the fear of arrests and prosecutions as thereinbefore alleged, and therefore this defendant denies the same; and this defendant also denies that said Charles F. Morse was or is the only managing director of said corporation, and he denies that said act of the legislature is in any respect invalid.

This defendant, further answering, saith that he is not advised

otherwise than by said bill whether it be true or not that heretofore, on the 12th day of March, 1897, the complainant, as a stockholder of said defendant corporation and as interested in the economical and successful management of the business of said corporation, and who was then and there a stockholder and shareholder at the time of the transactions complained of, desiring to secure on the part of the managing director of said defendant corporation a revocation of said order and directions of said defendant corporation and of its said acting president to put in force the provisions of said act, did serve a notice in writing
2138 upon said defendant corporation and Charles F. Morse, as the acting president and managing director of said corporation, demanding that said orders and directions aforesaid to put in force the said act and all of its provisions in the operation of the said stock yards and property of said defendant corporation be revoked and set aside upon the ground that the said act is unconstitutional and void, and also demanding that the said defendant corporation and the said managing director aforesaid should continue to exact, receive, and collect the rates and prices now existing in the operation of the business of the said defendant corporation for driving, yarding, watering, and weighing stock, and also in selling and delivering hay, corn, and other grain, so that its property would yield some compensation for services performed, sales made, and the business carried on; and this defendant denies the same, and denies that said Charles F. Morse is and was the sole managing director of said corporation, and this defendant is not advised otherwise than by said bill whether it be true or not that the defendant corporation and the said Charles F. Morse, acting president and managing director, as aforesaid, have each refused to comply with the request of the complainant and wholly disregarded the same; and this defendant denies the truth of said averment, and also denies that said Charles F. Morse is the sole managing director of said corporation, and this defendant is not advised otherwise than by said bill whether it be true or not that the complainant hoped that the said defendant corporation and the said Charles F. Morse, as its acting president and as its managing director, and the other officers and agents of said corporation, would have complied with the request of complainant; and this defendant denies the same, and denies that said Charles F. Morse was or is the sole managing director of said corporation, and denies that in justice and equity the said defendant corporation and its officers and agents should have complied with said request, if made, and this defendant is not advised otherwise than by said bill whether it be true or not that the said defendant corporation and the said Charles F. Morse, as such acting president and managing director, and the other officers and agents of said defendant corporation under his control and direction, to the great wrong and injury of the
2139 complainant in the premises, absolutely refuse to comply with such request, and this defendant denies the same; and this defendant denies that said Charles F. Morse is or was the sole managing director of said corporation, and denies that such request,

if made, was reasonable or proper; and this defendant is not advised otherwise than by said bill whether it be true or not that the cause of the failure of the complainant to obtain a revocation of said order and directions by the said defendant corporation and by the said Charles F. Morse as a director, vice-president, and general manager, and as the acting president of said corporation, is, as stated therein, that the said defendant corporation and the said Charles F. Morse, as such officer aforesaid, are in fear of the annoyance, harassment, humiliation, and expense to which the said defendant corporation and the said Charles F. Morse and the other officers, agents, servants, and employés of said corporation will be immediately subjected under the act therein referred to, and especially so if its provisions are attempted to be enforced by Louis C. Hoyle, as attorney general, or any other officer of the State of Kansas, and therefore the said defendant corporation and the said Charles F. Morse, as the officer of said corporation, absolutely refuse to secure to complainant such action or any action as he has demanded and desires on the part of and from the said corporation and of and from the managing directors thereof, and this defendant denies the same, and denies that said Charles F. Morse is the sole managing director of such corporation, and denies that the attorney general ever proposed or made any threats against said corporation or against said Charles F. Morse, and denies that said act of the legislature is invalid in any respect; and this defendant denies that this suit is not a collusive one with the defendants or any other person or party to confer on the above-entitled court of the United States jurisdiction of a case which it would not otherwise have cognizance of, and denies that such suit is brought in good faith for the protection of the complainant's own interest in the defendant corporation and to prevent his said stock therein from being depreciated, lost, and destroyed in viola-

2140 tion of law and the provisions of the Constitution of the United States, as aforesaid, but this defendant alleges that said suit is a collusive one between the complainant and the said Kansas City Stock Yards Company, to confer jurisdiction upon this court of a case which it would not otherwise have cognizance of, and that the suit is not brought in good faith for the protection of his own interest in the defendant corporation and to prevent his said stock and his property therein from being depreciated, lost, and destroyed in violation of law and of the provisions of the Constitution of the United States, and alleges that said suit is brought for the sole benefit of the said Kansas City Stock Yards Company and is prosecuted entirely under its direction.

2141 And this defendant, further answering, saith that he denies that the enforcement of the provisions of such act against the defendant corporation, its officers and agents, and the observance of the provisions of said act fixing a maximum charge to be made by said defendant corporation for services rendered, accommodations furnished, and hay, corn, and other grain sold by the defendant corporation will deprive defendant corporation of the power of exacting reasonable and fair compensatory rates for yardage and for services rendered and for hay, corn, and other grain sold in its

yards, and will deprive it of the use of its property, and in effect of the property itself, without the due process of law; and if the said defendant corporation and its officers and agents are allowed to put in force the maximum rates and prices aforesaid specified in said act the complainant and the other stockholders of said defendant corporation will be unable to secure a fair and reasonable per cent. on their money invested in said corporation and in the stock and property thereof, and will be unable from the earnings of the said defendant corporation to obtain any reasonable and fair compensation, dividend, or interest on the actual value of their said stock, and that the said defendant corporation cannot under such maximum rates, charges, and prices earn any reasonable or fair compensation, interest, or dividend on the present actual value of its property; and this defendant avers that this defendant has not proposed or threatened anything against said corporation or its officers or against the complainant, and the enforcement of said act will not deprive the defendant corporation of the power of exacting reasonable and fair compensatory rates for yardage and for other services rendered, and for hay, corn, and other grain fed in its yards, and avers that by the enforcement of said act the defendant corporation will only be deprived of the power of exacting unreasonable and unfair rates for yardage and other services, and for hay, corn, and other grain fed in its yards, and this will not deprive said corporation of the use of its property, or of the property itself, without due process of law, and by such enforcement the complainant and other stockholders of defendant cor-

portion will be able to secure a reasonable per cent. on their
2142 money invested in said corporation and in the stock and property thereof, and will be able from the earnings of said defendant corporation to obtain reasonable and fair compensation, dividends, or interest on the actual value of their stock, and that the defendant corporation can, under such maximum rates, charges, and prices, earn reasonable and fair compensation, interest, or dividends on the present actual value of its property, and this without the injustice and extortion practiced on its patrons as heretofore; and this defendant admits that the complainant has the right to demand of the said defendant corporation and of the said Charles F. Morse, as acting president and managing director thereof, that the business of said corporation shall be carefully, properly, economically, and successfully managed; but this defendant denies that complainant has the right to demand that said business shall be managed as heretofore, and avers that only such reasonable rates and compensation should be exacted, demanded, and collected for services rendered, accom-odations furnished, and for hay, corn, and other grain fed by said defendant corporation as prescribed by said act of the legislature; and this defendant denies that said corporation may have the right to earn reasonable and fair compensation, interest, or dividends on the present actual value of its property unless in doing so the value of the services to the owner and shipper of live stock shall be taken into consideration, as well as the interest of said stock yards company; and this defendant denies

that if such corporation continues in force its present existing rates, charges, and prices it can and will earn reasonable and fair compensation, interest, and dividends on the present actual value of its property, which can properly be divided among the stockholders of said corporation, including the complainant; but this defendant avers that if said corporation continues in force the rates heretofore existing it can and will receive an unfair compensation and a compensation unreasonably high, considering the cost and the value of the services rendered; and this defendant says he is not advised otherwise than by said bill whether it be true or not that the complainant fears that if such maximum rates, charges, and prices are put in
2143 force, as aforesaid, the complainant and the other stockholders of said defendant corporation will suffer great and irreparable injury, for which damages at law would be no adequate remedy; but this defendant avers that said rates are not destructive nor unreasonably low, and avers that the complainant and other stockholders of said corporation would suffer no injury whatever from the enforcement of said statutory rates, but would only be prevented from oppressing its patrons and obtaining an unfair advantage of them by exacting more than the reasonable value of the services performed and the accommodations and feed furnished; and this defendant is not advised otherwise than by said bill whether it be true or not that said defendant corporation and the officers and agents thereof will carry out their said orders and directions aforesaid unless restrained by the order and injunction of this honorable court, and this defendant denies the same.

And this defendant, further answering, denies that said complainant is entitled to the relief or any part thereof in said bill of complaint demanded; and this defendant prays the same advantage of his aforesaid answer as if he had pleaded or demurred to the said bill of complaint; and this defendant prays to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

L. C. BOYLE,
As Attorney General of the State of Kansas, Defendant.

DAVID MARTIN,
Solicitor and of Counsel for said Defendant.

2144 UNITED STATES OF AMERICA,
State and District of Kansas, First Division, } *ss:*
County of Shawnee,

Louis C. Boyle, being duly sworn, does depose and say that he is the defendant named in the foregoing answer subscribed by him; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he verily believes it to be true.

L. C. BOYLE.

Subscribed and sworn to before me this 14th day of October, A. D. 1897.

[SEAL.]

J. A. ROSEN,
Notary Public, Shawnee County, Kansas.

My commission expires October 13, 1900.

Endorsed: No. 7427. Charles U. Cotting, complainant, *vs.* The Kansas City Stock Yards Co. *et al.*, defendants. Answer of Louis C. Boyle, as attorney general, etc. Filed Oct. 15, 1897. Geo. F. Sharitt, clerk. L. C. Boyle, for self. David Martin, of counsel.

2145 In the Circuit Court of the United States for the District of Kansas, First Division.

CHARLES U. COTTING, Complainant,
vs.
THE KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants.
No. 7427. In Equity.

The replication of the above-named complainant to the answer of Louis C. Boyle, attorney general of the State of Kansas, one of the above-named defendants.

This replicant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of said defendant, for replication thereunto sayeth that he does and will aver, maintain, and prove his said bill to be true, certain, and sufficient in the law to be answered unto by said defendant, and that the answer of said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by said bill he has already prayed.

WAGGENER, HORTON & ORR,
D. R. HITE, *Sol'rs for Complainant.*

2146 (Endorsed:) No. 7427. U. S. circuit court. Charles U. Cotting, complainant, *vs.* Kansas City Stock Yards Co. *et al.*, defendants. Replication. Filed Oct. 15, 1897. Geo. F. Sharitt, clerk. Waggener, Horton & Orr and D. R. Hite, sol'rs for complainant.

2147 In the Circuit Court of the United States for the District of Kansas, First Division.

FRANCIS LEE HIGGINSON, Complainant,
vs.
THE KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants. } No. 7453. In Equity.

The replication of the above-named complainant to the answer of Louis C. Boyle, attorney general of the State of Kansas, one of the above-named defendants.

This replicant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of said defendant, for replication thereunto sayeth that he does and will aver, maintain, and prove his said bill to be true, certain, and sufficient in the law to be answered unto by said defendant, and that the answer of said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant, without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by said bill he has already prayed.

WAGGENER, HORTON & ORR,
D. R. HITE, *Sol'rs for Complainant.*

2148–2152 (Endorsed:) No. 7453. Francis Lee Higginson, complainant, *vs.* Kansas City Stock Yards Co. *et al.*, defendants. Replication. Filed Oct. 15, 1897. Geo. F. Sharitt, clerk. Waggener, Horton & Orr and D. R. Hite, sol'rs for complainant.

2153 UNITED STATES OF AMERICA, } *ss:*
District of Kansas, }

At a term of the circuit court of the United States of America for the district of Kansas, began and held at the city of Leavenworth, in said district, on Monday, the 7th day of June, 1897, proceedings were had and appear of record in words and figures as follows, to wit:

Present: Hon. Amos M. Thayer, circuit judge.

MONDAY, *Oct.* 18, 1897.

CHARLES U. COTTING, Complainant,
vs. 7427.
KANSAS CITY STOCK YARDS COMPANY *et al.*, Defendants.

FRANCIS LEE HIGGINSON, Complainant,
vs. 7453.
KANSAS CITY STOCK YARDS COMPANY *et al.*, Defendants.

(Causes Consolidated.)

Now come the parties herein, by their respective solicitors, and, in accordance with the stipulation of the parties filed herein, the above causes come on to be heard this 18th day of October, 1897, upon pleadings and proofs, in accordance with said stipulation, and Mr. D. R. Hite having been heard upon the part of the complainants and the argument not being completed, the further hearing thereof is continued until tomorrow at ten o'clock a. m.

2151–2156

TUESDAY, *Oct.* 19, 1897.

CHARLES U. COTTING, Complainant,
vs. 7427.
KANSAS CITY STOCK YARDS COMPANY *et al.*, Defendants.

FRANCIS LEE HIGGINSON, Complainant,
vs. 7453.
KANSAS CITY STOCK YARDS COMPANY *et al.*, Defendants.

(Causes Consolidated.)

And now, on this 19th day of October, 1897, comes on for further hearing the above causes, and Mr. J. M. Woolworth having been heard upon the part of the complainants and Mr. David Martin and Mr. L. C. Boyle on the part of L. C. Boyle, as attorney general of the State of Kansas, and the argument in the causes not being completed, the further hearing thereof is continued until tomorrow, at ten o'clock a. m.

WEDNESDAY, *Oct.* 20, 1897.

CHARLES U. COTTING, Complainant,
vs.
KANSAS CITY STOCK YARDS COMPANY *et al.*, Defendants. } 7427.

FRANCIS LEE HIGGINSON
vs.
KANSAS CITY STOCK YARDS COMPANY *et al.*, Defendants. } 7453.

} (Causes Consolidated.)

And now, on this 20th day of October, 1891, comes on the further hearing of the said causes, and Mr. L. C. Boyle, on the part of himself, as attorney general, having been heard, and Mr. Albert H. Horton having also been heard upon the part of the complainants, and the argument being completed, the court takes said causes, so presented and argued, under advisement, and reserves its decision thereon until some future day.

2157 In the Circuit Court of the United States for the District of Kansas, First Division.

CHARLES U. COTTING, Complainant,
vs.
KANSAS CITY STOCK YARDS COMPANY and L. C. Boyle, as Attorney General for the State of Kansas, *et al.*, Defendants. } Number 7427.

FRANCIS LEE HIGGINSON, Complainant,
vs.
KANSAS CITY STOCK YARDS COMPANY and L. C. Boyle, as Attorney General for the State of Kansas, *et al.*, Defendants. } Number 7453.

Mr. J. M. Woolworth, Mr. A. H. Horton, and Mr. D. R. Hite, for the complainants.

Mr. L. C. Boyle, attorney general, and Mr. David Martin, for the attorney general.

Before Thayer, circuit judge, and Foster, district judge.

2158 THAYER, *Circuit Judge:*

These cases have been before this court on two previous occasions: First, on an application for a preliminary injunction; and, second, on a motion to continue the injunction. 79 Fed. Rep., 679; — Fed. Rep., —. The nature of the litigation and the questions involved therein have therefore become well known and are familiar to the bar. For these reasons it does not seem necessary on the present occasion to do more than announce in a succinct form the conclusions which have been reached on the points in controversy.

I. The property of the Kansas City Stock Yards Company, located

in Kansas City, Kansas, and Kansas City, Missouri, which is used for yarding, feeding, watering, and weighing cattle, has, by the voluntary act of the corporation which owns the same, become affected with a public use, and is therefore subject to legislative control, State or national, to the extent at least that the proper legislative body may prescribe a maximum rate of compensation to be charged for the services rendered at said yards in caring for live stock. The public have a greater interest in said property and in the management thereof than in other private property, because it is located in a large city at the junction point of many lines of railroad, which radiate therefrom in all directions, because of the vast number of cattle and other live stock which annually seek a market in the cities where the property is located or pass through said cities on their way to other markets, and because of the manner in which, according to business usage, the traffic in cattle is carried on. The stock yards in question furnish the only proper facilities in the cities where they are located for unloading, resting, and feeding stock which is in course of transit to other markets; it is the place where buyers and sellers of live stock congregate and transact their daily business, and for that reason it is the only available market place in said cities where live stock can be conveniently sold
2159 and delivered. The stock yards company, by its foresight and energy, has doubtless done much to create these conditions, but the fact remains that nearly all cattle shippers and dealers residing in States and Territories tributory to the Kansas City market are compelled to avail themselves of the facilities which the stock yards company affords and to pay such charges as it may see fit to impose. Therefore it is that the proper legislative body has the power to fix a limit to such charges, to the end that they may not become excessive and unreasonable. To such regulations every person and corporation must submit when their property is of such character or is so situated and subject to such environments that many people are compelled to become their patrons. Munn *vs.* Illinois, 94 U. S., 113, 130.

II. While much business is transacted at the Kansas City stock yards, consisting in the purchase and sale of live stock shipped to that market from other States than Kansas, which is interstate business, yet it is doubtful whether the stock yards company itself is engaged in interstate commerce. It neither buys nor sells cattle or other animals. Its business consists in yarding, feeding, watering, and weighing live stock for its customers. It also loads and unloads stock from cars, but in this latter respect it acts merely as the employee of the various railroad companies, from whom alone it receives compensation for such services. The claim of the stock yards company that is is engaged in interstate commerce derives no additional support from the accidental location of its yards on the boundary line between two States. The inherent character of the business which it transacts, as above described, is not changed by the fact that its yards are located partly in Kansas and partly in Missouri, and that it herds cattle on both sides of the line and drives them, while in its custody, to and fro across the line to suit

its own convenience or the convenience of its customers. This shifting of live stock from one side of the State line to the other
2160 within its own yards and for its own convenience is not interstate commerce within the proper meaning of that phrase.

Conceding, however, but without deciding, that the business in which the stock yards company is engaged is so intimately related to interstate business transacted in its yards by other persons that Congress might lawfully prescribe a maximum rate of charges for yarding and feeding cattle shipped thereto from other States than Kansas, still the court is of the opinion that this power to fix a limit to such charges is not of such an exclusive character as to prevent the State of Kansas from exercising a similar power in the absence of any legislation on the subject by Congress. It is not necessary or even expedient that such charges should be uniform in the various stock yards throughout the country, because stock can be yarded and fed more cheaply in some localities than in others. Diverse regulations on this particular subject by the different States will create no conflict of authority and lead to no embarrassments. The subject, therefore, with which the Kansas statute undertakes to deal is not national in its character, as was the case with the statutes involved in Wabash, St. Louis & Pacific Railway Co. *vs.* Illinois, 118 U. S., 557, and in Covington, etc., Bridge Co. *vs.* Kentucky, 154 U.S., 204; but it is a matter susceptible of local regulation and control, without trenching on the authority of Congress. The statute in question does not impose a tax on interstate commerce, nor exact a license fee from those engaged in such business, nor prescribe conditions subject to which such business shall be carried on, nor interpose obstacles to the free flow of such traffic. Its effect on interstate traffic is purely incidental, and, to the extent that it prevents excessive charges for yarding and feeding cattle in the course of transit, it tends to facilitate rather than to hinder such traffic. In short, it may be said, with reference to the claim that the Kansas statute is void because it is a regulation of interstate com-
2161 merce, that such contention in behalf of the complainants must be overruled on the strength of Munn *vs.* Illinois, already cited, and several other cases, notably Budd *vs.* New York, 143 U. S., 517; Brass *vs.* North Dakota *ex rel.* Stoeser, 153 U. S., 391, wherein State statutes limiting the rate to be charged for elevating grain into elevators and storing and delivering the same were upheld as not being in violation of the commerce clause of the Federal Constitution. The case at bar differs from those last cited in that the State of Kansas is here attempting to control the conduct of a corporation of its own creation; but, without laying any stress on the latter fact, it is sufficient to say that the cases last referred to and the one at bar are in all essential respects parallel, and that the distinction between them which counsel attempt to draw is more fanciful than real.

III. The important question presented by these cases and the only question which is not foreclosed by controlling authority is whether the maximum rates prescribed by the Kansas statute for yarding and feeding live stock are reasonable or in their nature

confiscatory. If confiscatory the act, or so much thereof as prescribes rates, is void by the provisions of the fourteenth amendment of the Federal Constitution, which prohibits a State from taking property "without due process of law" or denying "to any person within its jurisdiction the equal protection of the laws." Railroad Commissioners' Cases, 116 U. S., 307, 331; Regan vs. Farmers' Loan & Trust Co., 154 U. S., 362, 399. A prime factor in determining whether the prescribed rates are reasonable or confiscatory is the valuation which shall be placed on the property of the stock yards company which is used for the purpose of yarding and feeding stock. With reference to that subject it may be said that different methods of estimating the value of property may properly be employed when it is valued for different purposes. When a valuation is placed on property which has become affected with a public use for the purpose of ascertain-
2162 ing whether the maximum rate of compensation fixed by law for its use is reasonable or otherwise, it is obvious that the income derived therefrom by the owner before it was subject to legislative control cannot always be accepted as a proper test of value, because the compensation which the owner charged for its use may have been excessive and unreasonable. Again, when property has been capitalized by issuing stock, neither the market value nor the par value of the stock can be accepted in all cases as a proper criterion of value, because the stock may not represent money actually invested, and, furthermore, because the property may have been capitalized mainly with reference to its income-producing capacity on the assumption that it is ordinary private property which the owner may use as he thinks proper without being subject to legislative control. On the other hand, however, when property is valued for the purpose last stated, it is clear that the owner thereof is entitled to the benefit of any appreciation in value above the original cost and the cost of improvements, which is due to what may be termed natural causes.

If improvements made in the vicinity of the property,
2163 the growth of the city or town where it is located, the building of railroads, the development of the surrounding country, and other like causes give property an increased value, the owner cannot be deprived of such increase by legislative action which prevents him from realizing an income commensurate with the enhanced value of his property.

Applying these general principals to the case in hand, the court concludes that neither the sum for which the property of the stock yards company has been capitalized, to wit, $7,368,650, nor the market value of its stock, can be accepted in this proceeding as a correct test of its value. In the first place, the outstanding stock represents property of the value of upwards of a million dollars not used for the purpose of yarding and feeding stock which must be excluded in computing the value of the company's property which will be affected by the statute in question. In the second place, a large percentage of the stock now outstanding does not represent money actually paid in by the shareholders or property

conveyed to the corporation, but represents rather an assumed appreciation in the value of the company's property over first cost and the good will of its business. On one occasion the stock of the company was doubled—that is to say, it was increased from $1,000,000 to $2,000,000 without the payment of any money, each stockholder receiving an additional amount of stock equal to the amount which he then held. It is fair to infer that a large amount of stock has been issued by the company not so much with reference to the actual value of its physical property as with reference to the income which it could be made to produce and the dividends it could be made to pay. That this latter consideration has been a potent factor in producing the present volume of stock is a necessary inference from all the testimony For these reasons the capital stock cannot be taken as truly representing the value of the corporate property in a proceeding where the inquiry as to its value is made for the purpose of ascertaining whether certain rates prescribed by the legislature for yarding and feeding cattle are reasonable or unreasonable. The fact that the State possesses the power to prescribe a maximum charge for such services necessarily prevents the court from giving as much weight to the possible income-producing
2164 capacity of the property in controversy as it might give if the stock yards company was vested with the right to charge as much for such services as it thought proper. Neither can the opinion of certain experts as to the value of said property be regarded as reliable, much less as conclusive, because such opinions are doubtless based to a considerable extent on the income which the property can be made to yield and upon the assumption that the owner has the right to determine what price he will charge for the use of his property. Upon the whole, therefore, the court concludes that the value of the property used for stock-yards purposes as assessed by the master is not unreasonable considering the object for which such valuation was made, and that no sufficient reasons have been shown for disturbing the finding of the master on that issue.

IV. The value of the property used for stock-yards purposes, as fixed by the master, including the value of certain supplies of feed and other materials which were on hand December 31, 1896, is $5,388,003. The gross income realized by the stock yards company during the year 1896, which may be taken as representing its average gross income, was $1,012,271.22. The total expenditures of the company for all purposes during the same period amounted to $535,297.14, which would indicate a net income for the year of $476,984.08. A controversy arises, however, as to the nature of some of the expenditures for that year. It is claimed on the one hand, but denied on the other, that the operating expenses for the year 1896, such as may properly be charged to the profit and loss account, amounted to $365,712.49 instead of $535,297.14, the difference between the two amounts, $169,584.65, consisting of money which was expended in making new and permanent improvements, which added by that amount to the value of the property and for that reason should not be treated as operating expenses in comput-

ing the net profits. With respect to this contention the court has reached the following conclusion:

A very large part of the sum last mentioned—all of it, in fact, except about $6,000—was expended in building new struct-
2165 ures and making permanent improvements, which increased the value of the company's property to the extent of such expenditures, and therefore cannot be regarded as operating expenses in estimating the net profits. The company itself took this view of the question by charging them to "construction account," and in due season it would doubtless have capitalized the amount of such expenses by issuing stock therefor, as it had previously capitalized other expenses of a similar character. At the same time, as buildings, pens, pavements, and other similar structures deteriorate in value somewhat from year to year, even where they are repaired in the ordinary way, it is eminently proper, in estimating the net profits, to set aside annually out of the gross income a certain sum to cover such depreciation. The testimony does not show with any great degree of accuracy what sum should be thus set apart annually, in addition to the cost of ordinary repairs, but as the sum of $32,309 appears to have been expended in the year 1896 for ordinary repairs, which sum was charged to the profit and loss account under that head, the court concludes that the sum of $50,000 is an adequate amount to cover the annual loss for deterioration not made good by ordinary repairs. Fifty-six thousand dollars has accordin-ly been deducted from the sum of $169,584.65, charged to "construction account," and the balance of that sum has been added to the net profits. The result is that the net income for the year 1896 was $476,984.08, plus $113,584.65, originally charged to "construction account," or, in the aggregate, $590,568.73. If the rates prescribed by the Kansas statute for yarding and feeding stock had been in force during the year 1896, the income of the stock yards company would have been reduced that year to the extent of $300,651.77, leaving a net income of $289,916.96, on the assumption, which is a very reasonable one, that its expenses would have remained a constant quantity, and that the volume of its business would not have been sensibly increased by the reduction in rates. Its income would have been adequate to yield a return of $5\frac{3}{10}\%$ on the value of the property used for stock yards purposes, as fixed by the master, or $4\frac{6}{10}\%$ on the sum for which the property has been capitalized, first deducting from that sum the value of all property represented by the capital stock which is not used for stock-yards purposes.

2166 V. Conceding, as we must, that the legislation complained of was radical in its nature and effect, that it reduced the company's income about fifty per cent., and that it prevents it from realizing on the capital invested in its plant such a per cent. as is ordinarily realized on capital invested in other mercantile and business enterprises, still the court is not prepared to hold that the statute is confiscatory, and that it deprives the company of its property without due process of law. It is common knowledge that large sums of money are invested in securities which do not yield a return ex-

ceeding five per cent. on the investment, and it is further manifest that the business of the stock yards company as conducted is not subject to the same risks of loss from bad debts and declining prices which affect many other business enterprises. Moreover, legislative enactments cannot be declared void because the courts entertain doubts of their expediency or validity or because such enactments tend to lessen the valuation which has theretofore been placed on certain private property. In a great variety of ways laws which cannot be challenged have an inevitable tendency to affect injuriously the value of property. The power of the State to fix the maximum price that shall be charged for the use of property affected with a public interest necessarily implies the power to lessen its value somewhat, or at least to lessen it as measured by the income which it might be made to produce if free from public control. In the very nature of things, considerable scope must be given to legislative discretion in determining the validity of statutes like the one now in question, since the judiciary have no power to prescribe a schedule of maximum rates, and it is only where there has been a clear abuse of power, where the rates prescribed by a statute are manifestly unreasonable and operate to deprive a citizen or corporation of that which justly belongs to them, even as against the public, that the courts have power to intervene. We are constrained to hold that the case at bar is not of that character.

VI. The great importance of the questions involved in these cases will doubtless occasion an appeal to the Supreme Court of the United States, where they will be finally settled and determined. If, on such appeal, the Kansas statute complained of should be adjudged invalid for any reason, and in the meantime the statu-
2167–2169 tory schedule of rates should be enforced, the stock yards company would sustain a great and irreparable loss. Under such circumstances, as was said in substance by the Supreme Court in Hovey *vs.* McDonald, 109 U. S., 150, 161, it is the right and duty of the trial court to maintain, if possible, the *status quo* pending an appeal, if the questions at issue are involved in doubt, and equity rule 93 was enacted in recognition of that right. The court is of opinion that the cases at bar are of such moment and the questions at issue so balanced with doubt as to justify and require an exercise of the power in question. Therefore, although the bills will be dismissed, yet an order will at the same time be entered restoring and continuing in force the injunction which was heretofore granted for the term of ten days, and if in the meantime an appeal shall be taken, such injunction will be continued in force until the appeal is heard and determined in the Supreme Court of the United States, provided that, in addition to the ordinary appeal bond, the Kansas City Stock Yards Company shall make and file in this court its bond in the penal sum of $200,000, payable to the clerk of this court and his successors in office, for the benefit of whom it may concern, conditioned that in the event the decree dismissing the bills is affirmed it will, on demand, pay to the party or parties entitled thereto all overcharges for yarding and feeding live stock at its stock yards in Kansas City, Kansas, and Kansas

City, Missouri, which it may have exacted in violation of sections 4 and 5 of the Kansas statute relative to stock yards, approved March 3, 1897, since an injunction was first awarded herein, to wit, on April —, 1897, and that it will in like manner pay such overcharges, if any, as it may continue to exact in violation of said statute during the pendency of the appeal, said obligation to become void if the statute in question shall be pronounced invalid by the Supreme Court.

Endorsed: Nos. 7427, 7453. Chas. U. Cotting *vs.* K. C. S. Y. Co. & F. L. Higginson *vs.* K. C. S. Y. Co. Opinion. Filed Oct. 28, 1897. Geo. F. Sharitt, clerk.

2170 In the Circuit Court of the United States for the District of Kansas, First Division.

CHARLES U. COTTING, Complainant,
vs.
KANSAS CITY STOCK YARDS COMPANY, a Corporation; C. F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants. } No. 7427. In Equity.

FRANCIS LEE HIGGINSON, Complainant,
vs.
KANSAS CITY STOCK YARDS COMPANY, a Corporation; C. F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants. } No. 7453. In Equity.

Final Decree.

Now come the parties and by their respective solicitors, on this 28th day of October, 1897, and the foregoing causes having been heretofore, on the 20th day of October, 1897, duly heard and submitted upon the pleadings, proofs, stipulations of the parties, master's report, exceptions thereto, and the arguments of counsel thereon, and the same having been duly taken under advisement by the court, and due deliberation having been had, it is ordered and adjudged and decreed that the said bills of complaint herein and each of them be, and the same are hereby, dismissed, with costs taxed in favor of the defendant, Louis C. Boyle, as attorney general of the State of Kansas. To the end, however, that the existing status may be main-
2171 tained pending an appeal to the Supreme Court of the United States, it is further ordered, adjudged, and decreed that the injunction which was heretofore granted in these causes and each of them be restored and continued in force for the term of ten days, and if in the meantime an appeal shall be taken, such injunction shall be continued in force until the appeal is heard and determined

in the Supreme Court of the United States, provided that in addition to the ordinary appeal bond the Kansas City Stock Yards Company shall make and file in this court its bond in the penal sum of two hundred thousand dollars, payable to the clerk of this court and his successors in office, for the benefit of whom it may concern, conditioned that in the event the decree dismissing the bills is affirmed it will, on demand, pay to the party or parties entitled thereto all overcharges for yarding and feeding live stock at its stock yards in Kansas City, Kansas, and Kansas City, Missouri, which it may have exacted in violation of sections 4 and 5 of the Kansas statute relative to stock yards, approved March 3, 1897, since an injunction was first awarded herein, to wit, on the 13th day of March, 1897, and that it will in like manner pay such overcharges, if any, as it may continue to exact in violation of said statute during the pendency of said appeal, said obligation to be void if the statute in question shall be pronounced invalid by the Supreme Court of the United States.

It is further ordered that nothing herein contained shall impair any recourse which any party or parties may have on the bond for seventy-five thousand dollars heretofore given in this case, except to postpone claims made thereon until this case is finally determined on appeal, and that the stock yards company shall hereafter give to shippers of cattle or their agents proper receipts for money paid for yarding, feeding, watering, and weighing live stock, which shall show on their face the amounts exacted for such
2172–2178 services and the price charged for feed.

The complainants, by their solicitors, duly excepted at the time in open court to the order and decree of said court dismissing said bills of complaint and each of them, and thereon, in due form, prayed for an appeal in each case, which said appeal is duly allowed, and the amount of the appeal bond to be given by the complainants, with one or more sureties, is fixed at $1,500.

AMOS M. THAYER,
U. S. Circuit Judge.

October 28th, 1897.

(Endorsed:) No. 7472, 7453. United States circuit court. C. U. Cotting *vs.* Kansas City Stock Yards Co. *et al.* Frances Lee Higginson *vs.* Kansas City Stock Yards Co. *et al.* Decree. Filed Oct. 28th, 1897. Geo. F. Sharitt, clerk in the above-entitled cause.

2179 In the Circuit Court of the United States for the District of Kansas, First Division.

CHARLES U. COTTING, Complainant,
vs.
KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants. } No. 7427. In Equity.

FRANCIS LEE HIGGINSON, Complainant,
vs.
KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants. } No. 7453. In Equity.

The above-named complainants and each of them, conceiving themselves and each of them aggrieved by the decree made on the 28th day of October, A. D. 1897, and entered on the 2nd day of November, A. D. 1897, in the above-entitled causes, do hereby appeal from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and said complainants and each of them pray that this appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said order and decree *was* made, duly authenticated, may be sent to the Supreme Court of the United States.

WAGGENER, HORTON & ORR &
D. R. HITE, *Solicitors for Compl'ts.*

Dated the 28th day of October, A. D. 1897.

2180 The foregoing claim for appeal is allowed.

AMOS M. THAYER,
United States Circuit Judge.

Dated the 28th day of October, A. D. 1897.

(Endorsed:) Nos. 7427 and 7453. United States circuit court. Charles U. Cotting and Francis Lee Higginson *vs.* Louis C. Boyle *et al.* Petition and allowance of appeal. Filed Nov. 5th, 1897. Geo. F. Sharitt, clerk. Waggener, Horton & Orr and D. R. Hite, solicitors.

were duly served with process in the foregoing suits more than twenty days before rule day of April, 1897, and the said defendants and each of them thereafter having failed to plead, answer or demur to the bills of complaint filed herein and each of them, and as an order for a decree *pro confesso* was duly entered in this court against them and each of them more than thirty days prior to October 28th, 1897; thereupon, the court orders, adjudges and decrees that the said bills of complaint in the foregoing suits and each of them be taken *pro confesso* against the said defendants the Kansas City Stock Yards Company, C. F. Morse, Harry P. Child, Eugene Rust and Elliott E. Richardson, with costs to the complainants to be taxed against said defendants last named, and each of them.

October 28th, 1897. Amos M. Thayer, U. S. Circuit Judge.

Endorsed: Filed Oct. 28, 1897. Geo. F. Sharitt, Clerk.

In the circuit court of the United States for the district of Kansas, first division.

Charles U. Cotting, *Complainant*, *vs.* Kansas City Stock Yards Company, a corporation, C. F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as attorney general of the state of Kansas, *Defendants.*	No. 7427. In equity.
Francis Lee Higginson, *Complainant*, *vs.* Kansas City Stock Yards Company, a corporation, C. F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as attorney general of the state of Kansas, *Defendants.*	No. 7453. In equity.

FINAL DECREE.

Now come the parties herein, and by their respective solicitors on this 28th day of October, 1897, and the foregoing causes having been heretofore, on the 20th day of October, 1897, duly heard and submitted upon the pleadings, proofs, stipulations of the parties, master's report, exceptions thereto, and the arguments of counsel thereon, and the same having been duly taken under advisement by the court and due deliberation having been had, it is ordered, adjudged and decreed

that the said bills of complaint herein and each of them be and the same are hereby dismissed, with costs taxed in favor of the defendant, Louis C. Boyle, as Attorney General of the State of Kansas. To the end, however, that the existing status may be maintained, pending an appeal to the Supreme Court of the United States, it is further ordered, adjudged and decreed that the injunction which was heretofore granted in these causes and each of them, be restored and continued in force for the term of ten days, and if in the meantime an appeal shall be taken, such injunction shall be continued in force until the appeal is heard and determined in the Supreme Court of the United States, provided, that in addition to the ordinary appeal bond, the Kansas City Stock Yards Company shall make and file in this court its bond in the penal sum of two hundred thousand dollars, payable to the clerk of this court and his successors in office, for the benefit of whom it may concern, conditioned that in the event the decree dismissing the bills is affirmed, it will, on demand, pay to the party or parties entitled thereto all overcharges for yarding and feeding live stock at its stock yards in Kansas City, Kansas, and Kansas City, Missouri, which it may have exacted in violation of sections 4 and 5 of the Kansas statute relative to stock yards, approved March 3, 1897, since an injunction was first awarded herein, to-wit, on the 13th day of March, 1897, and that it will in like manner pay such overcharges, if any, as it may continue to exact in violation of said statute during the pendency of said appeal — said obligation to be void if the statute in question shall be pronounced invalid by the Supreme Court of the United States.

It is further ordered that nothing herein contained shall impair any recourse which any party or parties may have on the bond for Seventy-five Thousand Dollars heretofore given in this case, except to postpone claims made thereon until this case is finally determined on appeal, and that the Stock Yards Company shall hereafter give to shippers of cattle, or their agents, proper receipts for money paid for yarding, feeding, watering and weighing live stock, which shall show on their face the amounts exacted for such services, and the price charged for feed.

The complainants, by their solicitors, duly excepted at the time in open court to the order and decree of said court dismissing said bills of complaint and each of them, and thereon in due form prayed for an appeal in each case, which said appeal is duly allowed, and the amount of the appeal bond to be given by the complainants with one or more sureties is fixed at $1,500.

AMOS M. THAYER, U. S. Circuit Judge.

October 28th, 1897.

Endorsed: Filed Oct. 28, 1897. GEO. F. SHARITT, Clerk.

In the circuit court of the United States for the district of Kansas, first division.

CHARLES U. COTTING, *Complainant*,
vs.
KANSAS CITY STOCK YARDS COMPANY, a corporation, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON and LOUIS C. BOYLE as attorney general of the state of Kansas, *Defendants.*
No. 7427. In equity.

FRANCIS LEE HIGGINSON, *Complainant*,
vs.
KANSAS CITY STOCK YARDS COMPANY, a corporation, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON and LOUIS C. BOYLE as attorney general of the state of Kansas, *Defendants.*
No. 7453. In equity.

The above-named complainants and each of them, conceiving themselves and each of them aggrieved by the decree made on the 28th day of October, A. D. 1897, and entered on the 2d day of November, A. D. 1897, in the above entitled causes, do hereby appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors which is filed herewith, and said complainants and each of them pray that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said order and decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

WAGGENER, HORTON & ORR, and
D. R. HITE,
Solicitors for Complainants.

Dated the 28th day of October, A. D. 1897.

The foregoing claim for appeal is allowed.

AMOS M. THAYER,
United States Circuit Judge.

Dated the 28th day of October, A. D. 1897.

Endorsed: Filed November 5, 1897. GEO. F. SHARITT, *Clerk.*

In the circuit court of the United States, for the district of Kansas, first division.

CHARLES U. COTTING, *Complainant*,

vs.

KANSAS CITY STOCK YARDS COMPANY, a corporation, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON and LOUIS C. BOYLE, as attorney general of the state of Kansas, *Defendants.*

No. 7427. In equity.

Causes consolidated.

FRANCIS LEE HIGGINSON, *Complainant*,

vs.

KANSAS CITY STOCK YARDS COMPANY, a corporation, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON and LOUIS C. BOYLE, as attorney general of the state of Kansas, *Defendants.*

No. 7453. In equity.

ASSIGNMENT OF ERROR.

Now on this 28th day of October, A. D. 1897, came the said complainants and each of them by Waggener, Horton & Orr and D. R. Hite, their solicitors, and say that the decree in said cause is erroneous and against the just rights of said complainants and each of them, for the following reasons:

First.

Because the evidence showed that the necessary operation of the act of March 3, 1897, as applied to the defendant stock yards company and its property used for stock yards purposes, would be to abridge the privileges and immunities of said defendant company, a citizen of the United States, contrary to the provision of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and thereby abridging the privileges and immunities of said complainants as stockholders in said company.

Second.

Because the evidence showed the defendant stock yards company, being a private corporation, was, prior to the enactment of the act of March 3, 1897, relating to stock yards, and complained of in the bills of complaint filed herein, in the unrestricted enjoyment of the use of private property, and that said act devoted the property of said corporation to a public use without providing any machinery by which the value of such use might or could be ascertained, and failed to provide any compensation for such taking of private property of the Kansas City Stock Yards Company for public use.

Third.

Because the evidence showed that the necessary operation of the said act of March 3, 1897, if applied to the business of the Kansas City Stock Yards Company or to that company, would deprive the complainants herein and the said defendant stock yards company, and each of them, or their property without due process of law, contrary to the provisions of section 1 of the fourteenth amendment of the constitution of the United States.

Fourth.

Because the court erroneously found that the operation of the act of March 3, 1897, complained of in the bills of complaint filed herein, would not, even if applied to the business of the Kansas City Stock Yards Company and to said company, deprive the complainants of a fair and reasonable return on their capital invested in said company and in the property thereof, and that the said act was not in violation of the fourteenth amendment to the constitution of the United States or any provision thereof.

Fifth.

Because the evidence showed that the act of March 3, 1897, complained of in the bills of complaint filed herein, was and is repugnant to the provision of section 1 of the fourteenth amendment to the constitution of the United States, which provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws."

Sixth.

Because the court erroneously found and held in the said decree that the business of the defendant stock yards company was not in whole or in part interstate commerce, and that the property owned and used by said company was not an instrument of such commerce.

Seventh.

Because the evidence showed that the act of March 3, 1897, complained of in the bills of complaint filed herein, was and is repugnant to that part of section 8 of article 1 of the Constitution of the United States, which provides that "The congress shall have power to regulate commerce with foreign nations and among the several states."

Eighth.

Because the evidence showed that the act of March 3, 1897, complained of in the bills of complaint filed herein, if applicable to the Kansas City Stock Yards Company or to the business in which it is engaged, was and is repugnant to sections 4386, 4387, 4388, 4389 and 4390 of the Revised Statutes of the United States.

Ninth.

Because the evidence showed that the act of March 3, 1897, as applied to the Kansas City Stock Yards Company or to the business in which it is engaged, was and is repugnant to an act entitled "An act to regulate commerce," enacted by the Congress of the United States, approved February 4, 1887.

Tenth.

Because the evidence showed that the act of March 3, 1897, complained of in the bills of complaint filed herein, if applied to the Kansas City Stock Yards Company, or to its business, was and is repugnant to an act of Congress of April 3, 1884, entitled "An act to establish a bureau of animal industry, and to prevent the exportation of diseased cattle," etc., and amendments and acts supplemental thereto.

Eleventh.

Because the evidence showed that all of the feed sold by the Kansas City Stock Yards Company was sold and paid for in the state of Missouri, and yet the court erroneously found and held that the prices of such feed so sold and paid for in the state of Missouri are regulated and controlled by the act of the legislature of March 3, 1897, relating to stock yards, and complained of in the bills of complaint filed herein, and also erroneously found and held that said act applied to the sales of feed so sold and paid for in the state of Missouri.

Twelfth.

Because the court erroneously found and held that under the said act of March 3, 1897, relating to stock yards, and complained of in the bills of complaint filed herein, that the prices at which merchandise, such as hay and grain, dealt in and sold by the stock yards company, are controlled and regulated thereby, and that said stock yards company had no power or authority to sell hay or grain or any other article of feed in the state of Kansas at any price in excess of that prescribed by the said act of March 3, 1897.

Thirteenth.

Because the court erroneously found and held that the act of March 3, 1897, relating to stock yards and complained of in the bills of complaint filed herein, has extra territorial force, and that the prices of such articles as hay and grain, sold by the Kansas City Stock Yards Company in the state of Missouri, are fixed, regulated and controlled thereby.

Fourteenth.

Because the court erroneously found that the said act of March 3, 1897, relating to stock yards, and complained of in the bills of complaint filed herein, applied to charges made by the defendant Stock Yards Company for the use of its property situated wholly within the state of Missouri.

Fifteenth.

Because the court in its final decree and in the written decision handed down in support of said decree erroneously found and held that the act of March 3, 1897, relating to stock yards, and complained of in the bills of complaint filed herein, was valid and applicable to all the business of the Kansas City Stock Yards Company, including all its business transacted in Kansas and in the state of Missouri, embracing also the charges for yardage in the state of Missouri and the sales of hay and grain made in the last named state.

Sixteenth.

Because the evidence showed that the present value of the property of the Kansas City Stock Yards Company, used exclusively for stock yards purposes, as a completed structure or unit, was and is over $9,500,000, yet the special master in his report erroneously fixed the present value of the property of the Kansas City Stock Yards Company, used and operated for stock yards purposes, as a dead structure and in segregated parts only, and such valuation in such form was erroneously approved by the court, and the court erroneously valued said property in the same way and refused to value said plant or property of the Kansas City Stock Yards Company as a completed structure, or as a unit, or as a going concern, and erroneously refused to value or consider as of any value the connections that said Kansas City Stock Yards Company had at and prior to the commencement of these suits and still has, and then and now existing, between such plant or system, and the several beef and pork packing establishments connected with and adjoining the said stock yards, and the connections made and then and now existing between the said Kansas City Stock Yards Company and various common carriers and railroads having connections therewith.

Seventeenth.

Because the court erroneously declined to find the value of the property of the Kansas City Stock Yards Company as a completed structure, or as a unit, or as an entirety, or as a going concern, and adopted and acted upon the report of the special master as to the value of said property, which was appraised by him in segregated parts only.

Eighteenth.

Because the evidence showed that the tangible and intangible property of the Kansas City Stock Yards Company possessed a value in combination and from use, which ought to have been recognized in estimating the present actual value of the plant and property of said company, and yet the court wholly ignored the value of the intangible property of said company and failed and refused to give any value

to the tangible and intangible property on account of its combination and use together, as a unit in its operation and management.

Nineteenth.

Because the court (without any examination of the evidence offered and submitted upon the trial), founded its final decree solely and alone upon the findings of the special master, filed in this court on August 24, 1897, and upon the alleged facts therein stated, when in truth and in fact findings numbers sixteen, forty-one, forty-three, forty-six, forty-seven and forty-eight of said special master's report are not supported by the preponderance of the evidence, or the weight of the evidence, or by any competent evidence whatever, and all of the evidence in the record is contrary to and contradictory of each of said findings aforesaid.

Twentieth.

Because the court overruled the ninth exception of the complainants to the sixteenth finding of the master's report, when the evidence showed that the cash investment of the Kansas City Stock Yards Company in the property, the cost of which, under the order of reference, was to be ascertained by the master, amounted to the sum of $6,374,208.07.

Twenty-first.

Because the evidence showed that the cash investment made by the Kansas City Stock Yards Company in the property used and occupied by it for stock yards purposes, was, at the commencement of these suits, $6,374,208.07, when the court erroneously assumed, found and held that such investment was only $3,852,361.81.

Twenty-second.

Because the court erroneously overruled the thirteenth exception of the complainants to finding number thirty-three of the master's report, respecting the earnings and expenditures of the defendant stock yards company, when the said finding was contradicted by the stipulation of the parties filed herein, and made "for the purpose of removing any question which may exist in regard to the manner in which the earnings of the stock yards company are or were disbursed."

Twenty-third.

Because said stipulation of the parties showed that the income of the Kansas City Stock Yards Company for 1896 amounted to the sum of $1,023,870.20, and that the expenditures out of the earnings for the same year for operating and maintaining its plant in a serviceable condition, amounted to the sum of $537,543.70, and the court, wholly disregarding said stipulation, erroneously found and held said earnings and disbursements at other and different sums, and at a much less sum than that agreed to by the parties in writing.

Twenty-fourth.

Because the court erroneously overruled the sixteenth exception of the complainants to finding number thirty-five of the master's report, when the said finding was contrary to the stipulation of the parties produced before said master and also before said court.

Twenty-fifth.

Because the court erroneously overruled the eighteenth exception of the complainants to finding number thirty-seven of the master's report, when said finding was in direct conflict with the stipulation of the parties, concerning the expenditures of the said Kansas City Stock Yards Company during the first five months of the year 1897.

Twenty-sixth.

Because the court erroneously overruled exception twenty-three of the complainants to finding number forty-three of the special master, respecting the value of the property of the Kansas City Stock Yards Company, when the evidence showed that such property was at the commencement of these suits and still is, of the value of more than $[illegible]500,000.00, and said master's report erroneously showed the value of said property to be only $5,388,003.25, and the said court erroneously accepted the said so-called value of $5,388,003.25 as the present actual value of the said property in direct conflict with all of the evidence in the cause.

Twenty-seventh.

Because the court erroneously overruled exception twenty-eight of the complainants to finding number forty-eight of the special master, respecting the market value of the outstanding capital stock of the defendant stock yards company, when the evidence upon this question showed that the market value of the outstanding stock during all of the year 1896 and immediately prior to the passage of the act of March 3, 1897, complained of in the bills of complaint filed herein, was more than $135 per share of the par value of $100, and the court thereon erroneously failed and refused to find that the value of the property of the Kansas City Stock Yards Company, based upon the amount for which the stock of the said corporation was bought and sold in the market.

Twenty-eighth.

Because the court erroneously declined to ascertain the value of the property of the defendant stock yards company by an examination of the evidence in the record, which conclusively showed the market value of the outstanding capital stock of the Kansas City Stock Yards Company during the year 1896 and immediately prior to the passage of the act of March 3, 1897, complained of in the bills of complaint filed herein.

Twenty-ninth.

Because the court erroneously overruled the exceptions of the complainants to findings of the special master, and each and all of said exceptions.

Thirtieth.

Because the evidence showed that the cost of reproducing the property of the stock yards company at the present time and also just before the commencement of these suits, would have exceeded the sum of $9,500,000.00, and the court erroneously declined to give any consideration to such evidence in ascertaining the value of said property and refused to fix the value of said property at the present cost of reproduction.

Thirty-first.

Because the court erroneously found and held that the defendant company, under the operation of the act of March 3, 1897, complained of in the bills of complaint filed herein, would receive an annual net income of between five and six per cent. upon the present actual value of the property when the testimony conclusively shows that the annual net income to said company under the operation of said act of March 3, 1897, if applied to the business of the Kansas City Stock Yards Company and the property used by it for stock yards purposes, would be less than two per cent. upon the present actual value of said property.

Thirty-second.

Because in reaching the conclusion that the net income of the defendant company, under the operation of the act in question would be between five and six per cent. upon the value of its property, the court erroneously included in such net income the whole income derived by the defendant company from sources not affected by the statute and not derived from the stock yards business.

Thirty-third.

Because the court received and considered as testimony tending to show the present actual value of the property of the Kansas City Stock Yards Company, used for stock yards purposes, the evidence of one C. D. Parker, produced as a witness by the defendant, Louis C. Boyle, as Attorney General of the State of Kansas, and subsequently based its decree on such and similar testimony, when the following evidence of the said Parker shows that he was not a proper expert witness as to the value of the property in controversy and was not competent to give any testimony in that regard.

"Q. You don't know anything about the value of the use of that land for stock yards purposes?

A. No, sir.

Q. If another stock yards company should come in, do you think it could procure as desirable a location in the bottom?

A. I don't think it could.

Q. Now state, if you can, what is the actual present value of the land for stock yards purposes?

A. I don't know."

All of the testimony of the said C. D. Parker, as to the value of the property in controversy, was received under the objections and subject to the exceptions of the complainants and each of them.

Thirty-fourth.

Because the court received and considered as testimony tending to show the present actual value of the property of the Kansas City Stock Yards Company, used for stock yards purposes, the evidence of one E. S. Merrill, produced as a witness by the defendant, Louis C. Boyle, as attorney general of the state of Kansas, and subsequently based its decree on such and similar testimony, when the following evidence of the said Merrill shows that he was not a proper expert witness as to the value of the property in controversy and was not competent to give any testimony in that regard.

"Q. What is the land worth in this tract marked 'E,' concerning which you have testified, lying east of Water street, in its present condition, just as it stands to-day?

A. I don't know.

Q. Then, as I understand your testimony, you are not testifying about the value of the property as it stands to-day, in its present condition?

A. Not improved property.

Q. You can answer that question by yes or no. You are not testifying of the value of 'E' as it stands to-day?

A. No.

Q. Now, then, in making up your value in reference to the tract marked 'E,' you consider that as naked acre property without any improvements, or without any business at all?

A. Yes, sir.

Q. That is the fact, is it?

A. Yes, sir."

All of the testimony of the said E. S. Merrill, as to the value of the property in controversy, was received under the objections and subject to the exceptions of the complainants and each of them.

Thirty-fifth.

Because the court received and considered as testimony tending to show the present actual value of the property of the Kansas City Stock Yards Company, used for stock yards purposes, the evidence of one E. F. Allen, produced as a witness by the defendant, Louis C. Boyle, as Attorney General of the State of Kansas, and subsequently

based its decree on such and similar testimony, when the following evidence of said Allen shows that he was not a proper expert witness as to the value of the property in controversy and was not competent to give any testimony in that regard.

"Q. Do you know the present value of the use of this land by the stock yards company?
A. What they are worth to the stock yards company?
Q. Yes, sir.
A. No, sir.
Q. In making your estimates of value, you were not influenced by the value of the use to which the lands were put by the company?
A. No, sir.
Q. Not at all?
A. No, sir."

All of the testimony of the said E. F. Allen, as to the value of the property in controversy, was received under the objections and subject to the exceptions of the complainants and each of them.

Thirty-sixth.

Because the court received and considered as testimony tending to show the present actual value of the property of the Kansas City Stock Yards Company, used for stock yards purposes, the evidence of one R. E. Cable, produced as a witness by the defendant, Louis C. Boyle, as attorney general of the state of Kansas, and subsequently based its decree on such and similar testimony, when the following evidence of the said Cable shows that he was not a proper expert witness as to the value of the property in controversy and was not competent to give any testimony in that regard.

"Q. Have you sold any real estate in the vicinity of that tract?
A. No, sir.
Q. Have you bought any?
A. No, sir.
Q. You have never had any transactions of buying or selling property around there?
A. No, sir.
Q. What, in your opinion, is that tract 'E' worth just as it is today?
A. For general purposes, or for the purposes for which it is being used?
Q. For the purposes for which it is being used.
A. Certainly, I could not answer that question.
Q. You don't know?
A. No, sir."

All of the testimony of the said R. E. Cable, as to the value of the property in controversy, was received under the objections and subject to the exceptions of the complainants and each of them.

Thirty-seventh.

Because the court received and considered as testimony tending to show the present actual value of the property of the Kansas City Stock Yards Company, used for stock yards purposes, the evidence of one C. W. Whitehead, produced as a witness by the defendant, Louis C. Boyle, as Attorney General of the State of Kansas, and subsequently based its decree on such and similar testimony, when the following evidence of the said Whitehead shows that he was not a proper expert witness as to the value of the property in controversy and was not competent to give any testimony in that regard.

Q. What is this property marked 'A,' 'B,' 'C,' 'D' and 'E' worth for stock yards purposes?

A. I don't know.

Q. What is the value of this property for railroad purposes?

A. I don't know.

Q. What is the value of this property for packing house purposes?

A. I don't know anything about the packing house business.

Q. What would be the value of that property for packing house purposes?

A. I have stated, I believe, that I don't know."

All of the testimony of the said C. W. Whitehead, as to the value of the property in controversy, was received under the objections and subject to the exceptions of the complainants and each of them.

Thirty-eighth.

Because the court erred in giving any consideration whatever to any of the testimony produced by the defendant, Louis C. Boyle, as attorney general of the state of Kansas, concerning the present actual value of the property of the Kansas City Stock Yards Company, used and operated for stock yards purposes in the states of Kansas and Missouri, including the structures thereon and personal property necessarily connected therewith, for that none of such testimony valued or considered the plant or property of the Kansas City Stock Yards Company as a unit, or as a completed structure, or as an entirety, or as a going concern, but all of said testimony estimated and assessed the value of the lands thereof as naked land only, divested of all improvements, and then valued the improvements separate and apart from the land, and then valued the personal property separate and apart from the improvements or land; whereas, the special master and also the court should have valued all the property of the Kansas City Stock Yards Company, used for stock yards purposes, as a unit, taking into consideration the uses to which it is put and all the elements making up its aggregate value, and the value thereof ought not to have been confined to naked lands, improvements separate and apart therefrom, and personal property separate and apart from the improvements and

lands, but the value of each part of said plant, if valued separately, should have included the proportionate part of the value resulting from the combination of the means by which the Kansas City Stock Yards Company's business was carried on, a value existing to an appreciable extent throughout the entire domain of its operation.

Thirty-ninth.

Because the court in the decree and in the opinion handed down in support thereof, should have found and held that the act of March 3, 1897, relating to stock yards, and complained of in the bills of complaint filed herein, was invalid and had no application to the business of the Kansas City Stock Yards Company carried on in the state of Kansas and in the state of Missouri, and therefore, notwithstanding such act, the court should have found and held that the business of the Kansas City Stock Yards Company was not subject to be regulated and controlled by said act, either in the state of Kansas or in the state of Missouri.

Fortieth.

Because said act of March 3, 1897, relating to stock yards, and complained of in the bills of complaint filed herein, is invalid as class legislation and as being directly contrary to the provisions of section 1 of the Fourteenth Amendment to the Constitution of the United States.

Forty-first.

Because the evidence showed that the stock yards owned and operated by the defendant company was the only stock yards within the state of Kansas to which the act of March 3, 1897, was intended to or could have any application.

Forty-second.

Because the court should have allowed the complainants one month after the filing of the report of the special master on August 24, 1897, within which to prepare and file exceptions thereto, instead of limiting the complainants to eighteen days within which to prepare and file said exceptions, as required by the order of the court entered herein on August 26, 1897, and duly excepted to at the time by the complainants.

Forty-third.

Because the court erred in entering an order in these causes bearing date of August 26, 1897, wherein the court specifically denied the application of these complainants, made under Equity Rules 74 and 83, for one month in which to prepare and file exceptions to the report of the master filed on August 24, 1897, all of which was duly excepted to at the time by the complainants.

Forty-fourth.

Because the decree of the court and the written opinion of the court filed in support thereof, are contrary to the weight of the evidence.

Forty-fifth.

Because the decree of the court and the opinion of the court filed in support thereof, are contrary to all of the evidence.

Forty-sixth.

Because the decree of the court and the opinion of the court filed in support thereof, are contrary to law.

Forty-seventh.

Because the decree of the court should have been rendered in favor of the complainants and each of them, upon the testimony submitted.

Wherefore, the complainants pray that the said decree herein complained of, be reversed, and that the said court may be directed to enter a decree in accordance with the prayer of the bills filed herein.

WAGGENER, HORTON & ORR and
D. R. HITE,
Solicitors for the Complainants.

October 28, A. D. 1897.

Endorsed: Nos. 7427 and 7453. Charles U. Cotting and Francis L. Higginson *vs.* Louis C. Boyle, &c. Assignment of error on appeal. Filed with and at the same time of the petition of appeal, this 5th day of November, 1897. GEO. F. SHARITT, Clerk.

In the circuit court of the United States for the district of Kansas, first division.

CHARLES U. COTTING, *Complainant*,

vs.

KANSAS CITY STOCK YARDS COMPANY, a corporation, C. F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON and LOUIS C. BOYLE, as attorney general of the state of Kansas, *Defendants.* — No. 7427. In equity.

FRANCIS LEE HIGGINSON, *Complainant*,

vs.

KANSAS CITY STOCK YARDS COMPANY, a corporation, C. F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON and LOUIS C. BOYLE, as attorney general of the state of Kansas, *Defendants.* — No. 7453. In equity.

KNOW ALL MEN BY THESE PRESENTS, That the Kansas City Stock Yards Company, duly incorporated and existing under the laws of the state of Kansas, is held and firmly bound to the clerk of this court and his successors in office, for the benefit of whom it may concern, in the penal sum of two hundred thousand dollars lawful money of the United States, for the payment of which well and truly to be made it hereby binds itself, its assigns and successors firmly by these presents.

Sealed with its corporate seal, and dated the 28th day of October, A. D. 1897.

The condition of the above obligation is such that in the event the decree finally entered in the foregoing causes dismissing the bills is affirmed, it will, on demand, pay to the parties or party entitled thereto, all overcharges for yarding and feeding live stock in its stock yards in Kansas City, Kansas, and Kansas City, Missouri, which it may have exacted in violation of Sections IV and V of the Kansas Statute relative to Stock Yards, approved March 3d, 1897, since a restraining order was first awarded herein, to-wit: On the 13th of March, 1897, and that it will in like manner pay such overcharges, if any, as it may continue to exact in violation of said statute, during the pendency of said appeal, the said obligation aforesaid to become void if the statute in question shall be pronounced invalid by the Supreme Court of the United States.

{Kansas City Stock 1883 Yards Company.}

KANSAS CITY STOCK YARDS COMPANY,
By C. F. MORSE,
Vice President and General Manager.

Attest: E. E. RICHARDSON, Secretary.

Approved and ordered to be filed and entered of record Nov. 2d, 1897.

AMOS M. THAYER,
U. S. Circuit Judge, 8th Circuit.

Endorsed: Nos. 7427 and 7453. Charles U. Cotting and Francis L. Higginson v. Louis C. Boyle. Bond of $200,000. Filed Nov. 6, 1897. GEO. F. SHARITT, Clerk.

In the circuit court of the United States for the district of Kansas, first division.

CHARLES U. COTTING, *Complainant*,

vs.

KANSAS CITY STOCK YARDS COMPANY, a corporation, C. F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON and LOUIS C. BOYLE, as attorney general of the state of Kansas,
Defendants.

No. 7427. In equity.

FRANCIS LEE HIGGINSON, *Complainant*,

vs.

KANSAS CITY STOCK YARDS COMPANY, a corporation, C. F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON and LOUIS C. BOYLE, as attorney general of the state of Kansas,
Defendants.

No. 7453. In equity.

KNOW ALL MEN BY THESE PRESENTS, That we, Charles U. Cotting and Francis Lee Higginson, complainants, as principals, and L. E. James and E. S. W. Drought as sureties, are held and firmly bound unto Louis C. Boyle, as Attorney General of the State of Kansas, in the full and just sum of fifteen hundred dollars ($1,500.00), to be paid to the said Louis C. Boyle, as Attorney General of the State of Kansas, his administrators, executors, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 2d day of November, in the year of our Lord, One Thousand Eight Hundred and Ninety-seven.

WHEREAS, lately, at a session of the United States Circuit Court for the District of Kansas, in a suit depending in said court between Charles U. Cotting and Francis Lee Higginson, complainants, and the Kansas City Stock Yards Company, a corporation, C. F. Morse,

Harry P. Child, Eugene Rust, Elliott E. Richardson and Louis C. Boyle, as Attorney General of the state of Kansas, defendants, a final decree was rendered against the said Charles U. Cotting and Francis Lee Higginson, complainants, and in favor of Louis C. Boyle, as Attorney General of the state of Kansas, one of said defendants, and the said complainants having obtained an allowance of appeal and filed a copy thereof in the clerk's office of the said court, to reverse the said decree in the aforesaid suit, and a citation directed to the said Louis C. Boyle, as Attorney General of the state of Kansas, citing and admonishing him to be and appear at the Supreme Court of the United States, to be holden at Washington, D. C., within thirty days from and after the 4th day of November, A. D. 1897.

Now, the condition of the above obligation is such that if the said Charles U. Cotting and Francis Lee Higginson, complainants, shall prosecute said appeal to effect, and answer all costs and damages if they fail to make their appeal good, then the above obligation to be void, else to remain in full force and virtue.

CHARLES U. COTTING,
By Waggener, Horton & Orr, his Solicitors. [SEAL.]
FRANCIS LEE HIGGINSON,
By Waggener, Horton & Orr, his Solicitors. [SEAL.]
L. E. JAMES. [SEAL.]
E. S. W. DROUGHT. [SEAL.]

Sealed and delivered in the presence of John H. Crandall.
Approved by Amos M. Thayer, U. S. circuit judge.

STATE OF MISSOURI, JACKSON COUNTY, ss.

L. E. James, being first duly sworn, says that he is a resident of said State and worth fifteen hundred dollars over and above all his exemptions, debts and liabilities. L. E. JAMES.

Subscribed in my presence and sworn to before me this 2d day of November, A. D. 1897. JOHN H. CRANDALL,
[SEAL.] Notary Public, Jackson County, Mo.

STATE OF MISSOURI, JACKSON COUNTY, ss.

E. S. W. Drought, being first duly sworn, says that he is a resident of said State, and worth fifteen hundred dollars over and above all his exemptions, debts and liabilities. E. S. W. DROUGHT.
[SEAL.]

Subscribed in my presence and sworn to before me this 2d day of November, A. D. 1897. JOHN H. CRANDALL,
Notary Public, Jackson County, Mo.

Endorsed: Nos. 7427 and 7453. Charles U. Cotting and Francis L. Higginson *vs.* Louis C. Boyle, &c. Appeal Bond. Filed Nov. 6, 1897. GEO. F. SHARITT, Clerk.

In the circuit court of the United States, for the district of Kansas, first division.

CHARLES U. COTTING, *Complainant*,

vs.

KANSAS CITY STOCK YARDS COMPANY, a corporation, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON, and LOUIS C. BOYLE, as attorney general of the state of Kansas, *Defendants.*

In equity. No. 7427.

Causes consolidated.

FRANCIS LEE HIGGINSON, *Complainant*,

vs.

KANSAS CITY STOCK YARDS COMPANY, a corporation, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON, and LOUIS C. BOYLE, as attorney general of the state of Kansas, *Defendants.*

In equity. No. 7453.

ORDER FOR ENLARGEMENT OF TIME TO DOCKET THE ABOVE CASE, AND FILE THE RECORD THEREOF WITH THE CLERK OF THE SUPREME COURT.

For good cause shown, it is hereby ordered that the time in which the complainants shall docket the above case and file the record thereof with the clerk of the supreme court of the United States, is enlarged by me for seventy days from and after the return day fixed in said citation on appeal to the supreme court, and the said complainants are hereby permitted to docket the above case and file the record thereof with the clerk of the supreme court of the United States by or before the period of seventy days from and after the date of the return day of said citation.

AMOS M. THAYER,
United States Circuit Judge.

Dated November 23d, 1897.

I hereby consent to the granting and signing of said order.

L. C. BOYLE,
Attorney General.

November 23d, 1897.

Endorsed: Nos. 7427 and 7453. Charles U. Cotting and Francis Lee Higginson *vs.* L. C. Boyle, atty-genl. *et al.* Order to enlarge time to docket and file record in Supreme court. Filed Nov. 26, 1897. GEO. F. SHARITT, clerk.

The United States of America, to Louis C. Boyle, as Attorney-General of the State of Kansas, greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the City of Washington, thirty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the Circuit Court of the United States for the first division of the judicial district of Kansas, wherein Charles U. Cotting and Francis Lee Higginson are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

WITNESS, the Honorable Amos M. Thayer, Judge of the Circuit Court of the United States for the District of Kansas, this 4th day of November, in the year of our Lord, one thousand eight hundred and ninety-seven.

(Signed.) AMOS M. THAYER,
United States Circuit Judge.

I hereby, this 6th day of November, A. D. 1897, accept due personal service of the above and foregoing citation on behalf of Louis C. Boyle, as Attorney General of the State of Kansas. (Signed.) L. C. BOYLE,
As Attorney General of the State of Kansas.

Endorsed: Nos. 7427 and 7453. United States Circuit Court. Charles U. Cotting and Francis Lee Higginson v. Louis C. Boyle *et al.* Citation and acceptance of service thereof. Filed November 6, 1897. GEO. F. SHARITT, Clerk.

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Office Supreme Court U. S.
FILED
OCT 24 1898
JAMES H. McKENNEY,
Clerk.

No. 237. 437

Brf. of Waggener & Horton for Appts. (mo.)

IN THE SUPREME COURT

OF THE UNITED STATES.

Filed Oct. 24, 1898.

CHARLES U. COTTING, *Appellant*,
vs.
KANSAS CITY STOCK YARDS COMPANY, A CORPORATION, ET AL., *Appellee*.

FRANCIS LEE HIGGINSON, *Appellant*,
vs.
KANSAS CITY STOCK YARDS COMPANY, A CORPORATION, ET AL., *Appellee*.

No. 237.
October Term, 1898.

STATEMENT OF THE APPELLANTS (COMPLAINANTS BELOW) ANSWERING THE MOTION FOR ADVANCEMENT.

ALBERT H. HORTON,
Of Counsel.

B. P. WAGGENER AND
ALBERT H. HORTON,
Solicitors for Appellants.

OCTOBER 22, 1898.

CRANE & CO., TOPEKA.

IN THE SUPREME COURT
OF THE UNITED STATES.

CHARLES U. COTTING, *Appellant*,
vs.
KANSAS CITY STOCK YARDS COMPANY, A CORPORATION, ET AL., *Appellee*.

FRANCIS LEE HIGGINSON, *Appellant*,
vs.
KANSAS CITY STOCK YARDS COMPANY, A CORPORATION, ET AL., *Appellee*.

No. 237.
October Term, 1898.

STATEMENT OF THE APPELLANTS (COMPLAINANTS BELOW) ANSWERING THE MOTION FOR ADVANCEMENT.

THE appeal in the above causes consolidated for trial was perfected in this court on January 31, 1898, the case having been docketed on that date as No. 576, of October Term, 1897. No motion was presented to the appellants or their counsel or filed in this court by Hon. Louis C. Boyle, Attorney General of the State of Kansas, for the advancement of the above causes for a hearing at an early day, until the filing of the

present motion a few days ago, notice of which was served on the 14th instant. We understand that the causes will be reached for hearing in January, 1899, or soon thereafter, on the regular call of the docket. Therefore, the motion to advance is unnecessarily filed and presented at this time, because there will be given to the Attorney General of the State of Kansas a speedy hearing of the appeal in the regular call of the docket of this court.

Again, if the Attorney General had desired any advancement of the said causes for hearing at a very early day, such a motion ought to have been filed and presented to this court soon after the causes (consolidated) were docketed in this court on January 31st, 1898. The appellants have always been willing to fully comply with the written stipulation of the parties of the date of October 7, 1897, and also with the directions of Judges Thayer and Foster, as set forth in the opinions filed by them. But just now, the pressing professional engagements of the solicitors and counsel of the appellants are such as to render it impossible for them or either of them to prepare their briefs in said causes for service upon the adverse parties and presentation to this court before the time the cases

will be reached in the regular call of the docket in January, 1899.

The appellants desire, through their counsel, to present oral argument upon the hearing of the appeal, and it will be utterly impossible for counsel to be present to argue such appeal before the holiday recess. The Attorney General having delayed from January 30, 1898, to this late day in suggesting to us or in making any application to this court to advance the hearing of the appeal, and as the present motion is filed only two or three months before the appeal will be heard in the regular call of the docket, we do not think the motion to advance is entitled at this time to serious consideration.

No beneficial result will accrue to the Attorney General or the State of Kansas by the granting of his motion to advance. The motion is not verified, and therefore its averments, excepting those referring to matters in the record, cannot be accepted as testimony, when controverted, as they are, by the affidavit on file and hereinafter referred to.

Further, the interests of the parties have changed materially since the appeal was perfected in this court. Soon after this appeal was taken, the Kansas City Stock Yards Company, for the

purpose of reducing to as small a sum as possible the amount which might be recovered against it for charges in excess of those provided by the law of Kansas (the validity of which is in question in this suit), should this court decide the law of Kansas of 1897 to be a constitutional and a valid one, on the first day of December, 1897, reduced its charges for feed to the amount fixed by that law. The company, whose yards, as appears in the record of this cause, were partly in Missouri and partly in the State of Kansas, also arranged to have all cattle (except quarantine cattle) received and yarded at the yards in the State of Missouri, and without the jurisdiction of the State of Kansas. All other live stock, except hogs, were also received and yarded in the State of Missouri; this change, so far as related to cattle other than quarantine cattle, was effected in January, 1898; and on July 1st, 1898, the charges for receiving and yarding hogs were reduced to the amount fixed by the Kansas law, and such charges have ever since continued in force.

To better carry into effect the above arrangements, and to more satisfactorily and conveniently handle, yard and feed all cattle and other live stock shipped to Kansas City, in June, 1898, two new

corporations were formed under the laws of the State of Missouri—one solely to conduct the quarantine yards, to which were sold and conveyed the yards situated in the State of Kansas, the other for the purpose of transacting all the business of the stock yards, other than that relating to quarantine cattle, to which was also sold and conveyed that portion of the yards of the old stock yards company lying wholly in the State of Missouri. The amount of any alleged excess charges could not under the circumstances amount to more than about thirty thousand dollars per annum. This statement is made upon the supposition that this court will not hold that the price for yarding and caring for cattle and other live stock in the State of Missouri is subject to the prices fixed by the Kansas law.

Therefore, while important legal questions are involved in these causes, it cannot be said that large public interests are necessarily interested therein. The statement in the motion that "the excess over the statutory charges exacted or received by the Kansas City Stock Yards Company already amounts to about $450,000," is grossly incorrect. As the two new Missouri corporations handling live stock have yarded and fed since

June, 1898, and will continue to yard and feed all live stock shipped to the stock yards at Kansas City from Kansas or elsewhere, the early disposition of the above causes is not now so important to the Attorney General or the people of the State of Kansas, as if the Kansas City Stock Yards Company, one of the defendants in error, continued to handle, yard and feed live stock.

Since June, 1898, all yardage or feeding of cattle or other live stock in the State of Kansas by the Missouri corporations referred to have been in full compliance with the Kansas statute of 1897. Of course, the charges by the Missouri corporations for the handling, yarding and feeding of cattle and other live stock within the territorial limits of Missouri exclusively, cannot be subject to the jurisdiction of the Kansas statute. Such statute, it will be conceded, has no extra-territorial force upon a foreign corporation doing business in another State.

The bonds required of the Kansas City Stock Yards Company by the court below hearing the causes as a condition of the stay of all proceedings under the Kansas statute of 1897 until this appeal is disposed of, are fully adequate for all purposes,

and ample to protect all interests adverse to the appellants until such appeal is decided.

The motion refers to the fact that the record has not yet been printed. Soon after the appeal was perfected in these causes, a verbal stipulation was entered into between the counsel for the appellants and the Attorney General that parts of the record not necessary for the consideration of this court upon the errors referred to in the appeal should be omitted by the clerk in printing the record. The particular parts of the record to be omitted have not been as yet specifically designated. The Attorney General, of course, will now agree by written stipulation to have the parts of the record not necessary to be printed properly designated.

We call to the attention of the court in the consideration of the motion to advance, the affidavit of Charles F. Morse, of October 17th, 1898, on file in this court.

Wherefore, we respectfully ask that the motion to advance filed by the Attorney General ought not at this time to be allowed, as the causes so consolidated can be more conveniently presented

when the appeal is reached in the regular call of the docket of this court. This will not prevent the causes being heard and disposed of at an early day.

B. P. WAGGENER AND
ALBERT H. HORTON,
Solicitors for Appellants.

ALBERT H. HORTON,
Of Counsel.

No. 237. [illegible]

DEC 17 1898
JAMES H. McKENNEY, Clerk.

Brf. of Waggoner & Horton for Appt

Filed Dec. 17, 1898.

Supreme Court of the United States.

CHARLES U. COTTING, *Appellant*,
vs.
KANSAS CITY STOCK YARDS COMPANY, A CORPORATION, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON, AND LOUIS C. BOYLE, AS ATTORNEY GENERAL OF THE STATE OF KANSAS, *Appellees.* } IN EQUITY.

FRANCIS LEE HIGGINSON, *Appellant*,
vs.
KANSAS CITY STOCK YARDS COMPANY, A CORPORATION, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON, AND LOUIS C. BOYLE, AS ATTORNEY GENERAL OF THE STATE OF KANSAS, *Appellees.* } IN EQUITY.

No. 237.
OCTOBER TERM,
1898.

(Causes 7427 and 7453, U. S. C. C. Dist. of Kansas, First Division,—Consolidated.)

APPELLANTS' BRIEF,

IN OPPOSITION TO THE MOTION OF APPELLEE, LOUIS C. BOYLE, AS ATTORNEY GENERAL, TO DISMISS THE APPEAL HEREIN.

B. P. WAGGENER AND
ALBERT H. HORTON,
Counsel for Charles U. Cotting and Francis Lee Higginson, Appellants.

CRANE & CO., TOPEKA.

Accepted Service of the above Brief this Dec. 13th 1898,
L. C. Boyle

IN THE

Supreme Court of the United States.

CHARLES U. COTTING, *Appellant*,

vs.

KANSAS CITY STOCK YARDS COMPANY, A CORPORATION, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON, AND LOUIS C. BOYLE, AS ATTORNEY GENERAL OF THE STATE OF KANSAS, *Appellees.*

IN EQUITY.

No. 237.

OCTOBER TERM, 1898.

FRANCIS LEE HIGGINSON, *Appellant*,

vs.

KANSAS CITY STOCK YARDS COMPANY, A CORPORATION, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON, AND LOUIS C. BOYLE, AS ATTORNEY GENERAL OF THE STATE OF KANSAS, *Appellees.*

IN EQUITY.

(Causes 7427 and 7453, U. S. C. C. Dist. of Kansas, First Division,—Consolidated.)

APPELLANTS' BRIEF,

IN OPPOSITION TO THE MOTION OF APPELLEE, LOUIS C. BOYLE, AS ATTORNEY GENERAL, TO DISMISS THE APPEAL HEREIN.

I.

STATEMENT.

THE motion to dismiss the appeal herein on the ground that there is a defect of necessary parties,

recently filed in this court by appellee, Louis C. Boyle, as Attorney General of the State of Kansas, is the second motion filed by him in this case in this court since the appellants docketed the appeal and filed the record thereof with the Clerk of this court.

On October 14, 1898, appellee, Louis C. Boyle, served a written notice upon the counsel of the appellants, as follows:

"IN THE SUPREME COURT OF THE UNITED STATES.

Charles U. Cotting, *Complainant*,
vs.
Kansas City Stock Yards Company, a corporation, Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, *Defendants*.

Francis Lee Higginson, *Complainant*,
vs.
Kansas City Stock Yards Company, a corporation, Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, *Defendants*.

No. 237.
OCTOBER TERM, 1898.

NOTICE OF MOTION TO ADVANCE.

To the Complainants and all the Defendants above named (except Louis C. Boyle, as Attorney General of the State of Kansas), and their respective counsel:

"You and each of you are hereby notified that on Monday, October 24, 1898, or as soon thereafter as the same can be heard, in said court, at Washington, D. C., a motion will be presented to advance said causes (consolidated) for hearing at an early day during the present term of said court and before the holiday recess, for reasons

stated in said motion, a copy of which is hereunto annexed.

L. C. BOYLE,
Attorney General.

DAVID MARTIN, of Counsel."

Upon receiving such notice, we accepted service thereof, and indorsed thereon the following:

"We hereby acknowledge service upon us of the foregoing notice of motion to advance, with a copy of said motion attached, this 14th day of October, A. D. 1898.—B. P. WAGGENER and ALBERT H. HORTON, *Counsel for Appellants.*"

A similar notice was served about the same time by appellee, Louis C. Boyle, upon the counsel for the Kansas City Stock Yards Company, Charles F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson, designated by the Attorney General, as "defendants above named." Service of the notices on said parties was duly accepted by their counsel in writing.

The notices so served upon the counsel of appellants and also upon the counsel of the parties designated as "defendants above named," were filed in due time with the Clerk of this court, and the motion to advance was also duly printed and filed in due time with the Clerk. Thereby, the Stock Yards Company and the other appellees filed their appearance in writing in this court.

Appellee, Louis C. Boyle, duly entered his appearance in this court in the above appeal by David Martin, his counsel, who also appeared personally in this court on October 24, 1898, as counsel for said appellee.

After the subpœnas issued in said cases had been duly served upon all of the defendants below, including the Kansas City Stock Yards Company, Charles F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson, and after the last-named defendants were in default, upon due proceedings being had, a formal decree *pro confesso* in each case was duly entered in favor of complainants below and against the last-named defendants.

On October 28, 1898, judgment was rendered and a final decree entered, "that the said bills of complaint herein, and each of them, be and the same are hereby dismissed, with costs taxed in favor of defendant Louis C. Boyle, as Attorney General of the State of Kansas."

At the rendition of the judgment against appellants (complainants below), and the entry of the final decree, an appeal was duly taken by appellants in open court. The record on file in this

case shows that the appeal was duly allowed in open court at the same term at which the decree was entered. The record recites that "the complainants, by their solicitors, duly excepted at the time in open court to the order and decree of said court dismissing said bills of complaint and each of them, and thereon in due form prayed for an appeal in each case, which said appeal is duly allowed, and the amount of the appeal bond to be given by the complainants with one or more sureties is fixed at $1,500." (Extracts, 56, 57.)

The appeal bond was duly given in proper time. The Kansas City Stock Yards Company on October 28th, 1897, gave a bond in the sum of $200,000 for the purpose of staying the operation of the Kansas Act of March 3d, 1897. This was approved by Judge Amos M. Thayer, U. S. Circuit Judge, November 2d, 1897, and duly filed in the court below. (Extracts, 71, 72.) This was a waiver of notice of appeal and also an appearance in this court.

The appeal was docketed in this court and the record filed on February 4, 1898,—at a prior term of this court. Since then, Wallace Pratt, as counsel for all defendants below, except Louis

C. Boyle, has filed his written appearance in this court.

Attention is called in the brief of appellee, Louis C. Boyle, to the fact that the judgment rendered against the appellants and the final decree of October 28, 1897, were of the same date as the formal decree *pro confesso* entered against certain of the defendants below. This court, however, must assume upon the record on file that the decree *pro confesso* was prior in point of time to the judgment rendered against appellants, although entered on the same date.

It is claimed by appellee, Louis C. Boyle, that notwithstanding a decree *pro confesso* was entered against the Kansas City Stock Yards Company, Charles F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson, that the final decree of October 28, 1897, "ordering, adjudging and decreeing that the said bills of complaint herein and each of them be and the same are hereby dismissed, with costs taxed in favor of defendant Louis C. Boyle, as Attorney General of the State of Kansas," is "a joint decree of dismissal in favor of all the defendants" (below), and that as "no citation has ever been issued,

except against Louis C. Boyle, and as his co-defendants are not named therein, or parties to the appeal," he insists the appeal should be dismissed, on the ground that there is a defect of necessary parties.

In this connection, we call attention to the following statement made on page 6 of the brief of said appellee, Louis C. Boyle: "On account of haste in bringing the action, it seems doubtful if Equity Rule 94 had been sufficiently complied with." Evidently this statement was made inadvertently by Mr. Boyle. It appears from a written stipulation signed by him that—

"The defendant Boyle, as Attorney General, admits that there was no collusion between the complainants in the above-entitled suits, and the defendant the Kansas City Stock Yards Company, or any of its officers, directors or attorneys, solicitors or counsel in respect to the bringing or prosecution of the said bills or either of them, and that the said bills were not, when the same were exhibited, and are not collusive to confer upon a court of the United States, jurisdiction of the said causes." (Extracts, p. 53.)

Why such statement should be interjected in the brief of Mr. Boyle does not seem apparent. It has no connection with the motion filed by him, or any matter involved therein.

II.

IF THERE IS ANY QUESTION ABOUT THE FACTS ON WHICH THE MOTION RESTS, THEN, AS THE RECORD IS NOT PRINTED, THE MOTION TO DISMISS THE APPEAL OUGHT TO BE POSTPONED UNTIL THE CASE IS HEARD ON ITS MERITS.

The appeal was docketed in this court on February 4th, 1898, and the record thereof has been on file in this court since that date. Yet, as late as October 14, 1898, appellee, Louis C. Boyle, never claimed or suggested to this court, by motion or otherwise, that there was a defect of necessary parties to the appeal taken by the appellants. On the other hand, on October 14th, 1898, he served a notice of his motion to advance the hearing of said appeal "at an early day during the present term of said court, and before the holiday recess." In his notices and motion printed and filed, he named all of the original defendants in both cases as appellees, and served notices upon the counsel of all of the defendants in both cases, excepting, of course, himself. His motion to advance and the notices thereof were had upon the theory that all of the defendants in both cases in the United States Circuit Court were parties to the appeal, and were before this

court. He indorsed his notices and motion to advance as follows:

"No. 237.—October Term, 1898.—Charles U. Cotting *v.* K. C. Stock Yards Co. *et al.*—Francis Lee Higginson *v.* K. C. Stock Yards Co. *et al.*—Motion to Advance.—L. C. Boyle, Attorney General. David Martin, of Counsel."

In answer to the notices served, counsel for appellants appeared in this court on October 24th, 1898, and thereupon were notified in open court by the counsel of Mr. Boyle that the motion to advance would not be presented to the court. The counsel of the Kansas City Stock Yards Company, Charles F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson, were, as before stated, also served with notices of the motion of Mr. Boyle to advance the appeal for an early hearing, and, as before stated, accepted in writing service of such notices and motion, and duly appeared thereby in this court in the appeal herein, as such written acceptances of notices and motion were duly filed in this court. The said Louis C. Boyle having entered his general appearance in this court in the appeal, and having filed his motion for the advancement of said appeal "for a hearing at an early day during the present

term of said court," all questions of mere errors or irregularities in such appeal, if any are apparent (which we deny), have been waived. He has waived all matters that can be waived by a general appearance of an appellee in this court.

Buckingham v. McLean, 13 How. 150.

On October 24th, 1898, Louis C. Boyle was permitted to withdraw his motion to advance the hearing of the appeal which had been filed by him in this court. But no application was made by him to withdraw his general appearance and enter a special appearance. In his motion to dismiss, he attempts to make a special appearance only, but this will not now avail him anything. The judgment and final decree were rendered on October 28th, 1897. The appeal reached this court before the end of the term to which it was made returnable, namely, on February 4th, 1898, when the same was duly docketed and filed.

Radford v. Folsom, 123 U. S. 725.
Dodge v. Knowles, 114 U. S. 430–438.

A general appearance cannot be changed to a special appearance so as to affect the rights of parties, without the consent of court.

The appeal will be reached in the regular call of the docket in March or April of the present

term of this court. The appellee, Louis C. Boyle, has caused a part of the transcript of the record to be printed to accompany his brief upon his motion to dismiss, but he has omitted to print from the transcript the pleadings filed by him in the court below, and has also omitted other parts of the transcript, which under some circumstances, might be considered material to be presented to this court upon this motion.

If there is any question about the facts, the motion must necessarily be postponed for hearing until the appeal is reached in the regular call of the docket. Then the record will be printed, and the court will have all the facts before it in a convenient form.

In *National Bank v. Insurance Company*, 100 U. S. (10 Otto) 43, it was observed by the Chief Justice:

"The further consideration of this motion is postponed until the case is heard on its merits. The record has not been printed, and counsel do not agree as to what it contains. We will not decide motions to dismiss before the record is printed when there is any question about the facts on which the motion rests. In order to get a decision before printing, motion papers must present the case in a way which will enable us to act understandingly without referring to the transcript on file."

III.

THE BRIEF OF THE APPELLEE UPON HIS MOTION TO DISMISS, EXAMINED.

The appellee, Louis C. Boyle, has filed a printed brief in support of his motion to dismiss. His argument is divided into three heads:

1. An assumption that certain facts shown by the record are conclusive upon the question as to what defendants are or are not parties on this appeal.

2. That the final decree is joint in favor of all the defendants.

3. That the final decree being joint in favor of all the defendants, all the defendants must be parties to this appeal.

The facts on which said appellee, Louis C. Boyle, relies, as showing that he is the only appellee herein, as we understand from his brief, are as follows:

1. That a citation has been issued against him alone. (Brief, pp. 4. 13.)

2. That the appeal bond runs to him alone. (Brief, p. 28.)

3. That the indorsements on the $200,000 supersedeas bond and on the assignment of error

show that the appeal was intended to be taken against the Attorney General and no one else. (Brief, p. 29.)

Appellee, in his argument, assumes that certain facts are decisive of the question as to what parties have or have not been made appellees on this appeal. He cites no authorities in support of his assumption that such is the effect of these facts, even if his construction of them were the true one.

On this assumption,—false, as we believe, in the light of the authorities to which we shall presently refer,—appellee founds his argument as to the joint nature of the decree and the consequent necessity of all the defendants being joined as appellees.

And even if his assumption of the effect of these facts were correct, his argument as to the necessity for a joinder of all the defendants on this appeal is far from convincing. He cites a line of cases which, we submit, are not in point on the question in support of which they are cited. If they have any application at all on this motion, it is in favor of appellants and in opposition to the contention of appellee. All of these cases, with one exception, belong to a large class of cases holding that where a judgment or decree

is rendered against several, all against whom it is rendered must join in the appeal. Now, if as appellee contends (Brief, p. 16), the *pro confesso* decree must be disregarded, the only parties against whom the decree of the court was rendered were the two complainants, Charles U. Cotting and Francis Lee Higginson, and both of these parties have joined in the appeal; so that in bringing the appeal the complainants have brought themselves strictly within the doctrine of these cases. If there had been more than two complainants against whom the decree was rendered, the cases might have been applicable in support of the motion, if all such complainants had not joined in the appeal.

The single case cited by appellee not belonging to the above class of cases is that of *Miller v. McKenzie*, 10 Wall. 582. In that case, Pitzer Miller brought suit against four defendants. Judgment was rendered in favor of defendants. Plaintiff brought a *writ of error*, which recited that the proceedings were between "Pitzer Miller, Larkin McKenzie *and others.*" The court dismissed the case because all the parties were not named.

But this case was decided in 1870, before the

amendment of the Judiciary Act in 1872 (now §1005, Revised Statutes of the United States), permitting, among other amendments, an amendment in the statement of parties in the writ of error.

As we understand this statute, such a defect as is referred to in the above case may now be amended, if the facts are shown by the record.

This practice, we think, is applicable also to appeals, under Revised Statutes, § 1012, providing that—

"Appeals from the circuit courts and district courts acting as circuit courts, and from district courts in prize causes, shall be subject to the same rules, regulations and restrictions as are *or may be* prescribed in law in cases of writs of error."

Walton v. Marietta Chair Co., 157 U. S. 342, 347.

Knickerbocker v. Pendleton, 115 U. S. 339.

IV.

THE PRINTED EXTRACTS FROM THE RECORD, AS FURNISHED BY APPELLEE, LOUIS C. BOYLE, REFERRED TO.

Upon an examination of the record as printed in appellee's extracts from the transcript of the record and furnished by him for the purposes of this motion, we find the following facts:

1. *Pro Confesso Decree.*—All the parties are named, both in the title and in the body of the decree. (Extracts, p. 55.)

2. *Final Decree.*—The parties are all named in the title. In the body of the decree it is recited that "Now come the parties herein, and by their respective solicitors," &c. (Extracts, p. 56.)

3. The petition and allowance of appeal contains the names of all the defendants in the title. (Extracts, p. 58.)

4. In the assignment of errors all the defendants are named in the title, and the name of the defendant the Kansas City Stock Yards Company is frequently mentioned in the assignments as a party. (Extracts, p. 59.)

The indorsement on the assignment of errors as to parties is "Charles U. Cotting and Francis L.

Higginson *vs.* Louis C. Boyle, &c." (Extracts, p. 70.)

5. In the $200,000 supersedeas bond given by the Kansas City Stock Yards Company, all defendants are named in the title. (Extracts, p. 71.)

The indorsement on the supersedeas bond as to parties is "Charles U. Cotting and Francis L. Higginson *vs.* Louis C. Boyle." (Extracts, p. 72.)

6. The appeal bond names all defendants in the title and in the body of the bond. (Extracts, p. 72.)

It is in favor of Louis C. Boyle alone. (Extracts, p. 72.)

It is indorsed as to parties, "Charles U. Cotting and Francis L. Higginson *vs.* Louis C. Boyle, &c." (Extracts, p. 73.)

7. In the order for enlargement of time to docket the above case and file the record with the Clerk of the Supreme Court, all defendants are named in the title. (Extracts, p. 74.) It is indorsed, "Charles U. Cotting and Francis Lee Higginson *vs.* L. C. Boyle, Attorney General, *et al.*" (Extracts, p. 74.)

8. The only citation issued, so far as the record shows, runs to Louis C. Boyle, Attorney General of the State of Kansas. It is indorsed as to

parties, "Charles U. Cotting and Francis Lee Higginson *vs.* Louis C. Boyle, *et al.*"

We desire again to call attention to one important fact shown by the record, which appellee fails to mention in his brief, perhaps having overlooked it. It is this: That the final decree shows by its recitals that all the parties were in court at the rendition of said decree, and that the complainants then and there in open court, in due form, prayed an appeal, which appeal was at that time duly allowed. (Extracts, p. 12.) **This fact alone, as we think, is, under the decisions of this court hereinafter referred to, fatal to appellee's contention that there is a defect of necessary parties on this appeal.**

V.

IF AN APPEAL IS TAKEN IN OPEN COURT, AT THE SAME TERM AT WHICH THE DECREE IS ENTERED, NO CITATION TO ANY PARTY INTERESTED IN OR AFFECTED BY THE DECREE IS NECESSARY. THE APPEAL IN THE ABOVE-ENTITLED CAUSES HAVING BEEN TAKEN IN OPEN COURT, WHILE ALL THE PARTIES WERE PRESENT, WAS A NOTICE TO ALL PARTIES, AND THEREFORE NO CITATION TO APPELLEE LOUIS C. BOYLE OR ANY OTHER PARTY WAS NECESSARY.

1. *The chief fact upon which the appellee relies as showing that all the defendants against whom the final decree was rendered have not been made parties to this appeal is, that the citation has been issued against him alone.* (Brief, pp. 4, 13, 28.)

The learned counsel for appellee has evidently overlooked the most important fact in the record bearing on this motion, which is that *the final decree of the court below* (Extracts from Transcript, p. 57) *shows that the appeal was prayed and allowed in open court at the time of the rendition of said decree, while all the parties were present in court.* The bond was duly fixed in open court, and therein given and filed.

It is the well-established doctrine of this court, that when an appeal is so taken and bond is filed

at the same term, no citation is required; that the citation is not jurisdictional where the parties have notice otherwise of the appeal,—its only purpose being notice.

Brockett v. Brockett, 2 How. 238.
Reily v. Lamar, 2 Cranch, 344.
U. S. v. Vigil, 10 Wall. 423.
The San Pedro, 2 Wheat. 132.
Yeaton v. Lenox, 7 Pet. 220.
Villabolas v. U. S., 6 How. 81.
Dodge v. Knowles, 114 U. S. 430.
Hewitt v. Filbert, 116 U. S. 143.
Milner v. Meek, 95 U. S. 252.
Jacobs v. George, 150 U. S. 415.
Sage v Central R. R. Co., 96 U. S. 712.
First National Bank of Omaha, 96 U.S. 736.
Haskins v. Rld., 109 U. S. 106.

In the leading case of *Brockett v. Brockett*, *supra*, it was urged in support of the motion to dismiss the appeal, that there was a want of proper parties to the writ of error and citation. The court said:

"Another and last ground of exception is to the want of proper parties to the writ of error and citation. No writ of error lies in this case, but an appeal only; and the appeal having been made in open court, no citation was necessary. . . . We are of the opinion that the motion to dismiss

the appeal ought to be overruled, and it is accordingly overruled."

In *Reily v. Lamar*, *supra*, Chief Justice MARSHALL, delivering the opinion of the court, remarked, "that the appeal having been prayed pending the term of the court below, no citation was necessary."

In *U. S. v. Vigil*, *supra*, the court said: "The want of a citation was mentioned on the argument as another ground of dismissal, but the answer is, the appeal was taken in open court, at the term in which the judgment was rendered. In such cases no citation is necessary."

In the case of *Milner v. Meek*, *supra*, one of the grounds urged for dismissal of the appeal was, "Because the other lien creditors, who were parties to the proceeding below, are not parties to the appeal."

The court said, in overruling this objection: "As to the second objection, it is sufficient to say that the appeal was allowed in open court during the term at which the decree was rendered. No citation was therefore necessary. *Milner alone appealed; but his appeal brings up so much of the case and such of the parties as are necessary for the determination of his rights.*"

In *Jacobs v. George*, *supra*, (1893,) it was observed: "It must be regarded as settled, that where an appeal is allowed in open court and perfected during the term at which the decree or judgment appealed from was rendered, no citation is necessary."

And in cases where a citation is necessary, to show that the appeal has not been abandoned, for the reason that security for appeal is taken out of court or after the term, and where, by accident, the citation has been omitted, a motion to dismiss an appeal allowed in open court and at the proper term will never be granted until an opportunity to give the requisite notice has been afforded.

Dodge v. Knowles, 114 U. S. 430.

We think, therefore, that under the decisions of this court, where an appeal was taken, as this appeal was taken, in open court, at the same term at which the decree appealed from was rendered, all the parties being present, and thus having full notice, the irresistible conclusion is, not only that no citation was necessary, but that all necessary parties are, by virtue of the notice of the appeal thus given to them in open court, before the Supreme Court on this appeal.

2. *The appeal bond, if not in proper form, may be amended, or a new bond may still be filed, if necessary.*

Edmonson v. Bloomshire, 7 Wall. 306.
Ex Parte The Milwaukee Rld. Co., 5 Wall. 188.
Martin v. Hunter, 1 Wheat. 304, and cases there cited.
2 Foster's Federal Practice, p. 1046, note 2.
Davidson v. Lanier, 4 Wall. 447–453.
Shepherd v. Pepper, 133 U. S. 626–644.
Seymour v. Freer, 5 Wall. 822.

The second fact on which appellee relies as showing a defect of parties herein is, that the appeal bond runs to the appellee, Louis C. Boyle, alone. (Brief, p. 28.)

We fail to see how the bond in its present form shows that any parties have been omitted from the appeal, or that there was any intention to do so on the part of the appellants.

All that it shows, if it shows anything, is that the appellants may possibly have filed a bond which does not protect all the parties against whom this appeal has been allowed.

But even if appellee were objecting to the form of the bond, which is not the case, this court will, under the above decisions, allow a new bond to be filed now, if necessary.

It may be said, however, that the omission to file a bond in favor of some of the appellees, is an objection which it would seem should come from those parties as being the only ones directly interested in having such a bond. If they do not complain, it would seem that there is no one else who should be permitted to do so. If any amendment to the appeal bond is necessary, or if a new bond is required, we are ready to amend as directed, or file a new bond.

3. *The fact that the indorsements on some of the papers forming a part of the record on this appeal do not contain the names of all the defendants, excludes no party from participating in this appeal.*

In addition to the failure to issue a citation against any defendant except the Attorney General, and to execute a bond in favor of all the defendants, appellee calls attention to another fact, which he thinks also shows an intention on the part of appellants to exclude necessary parties from participating in this appeal. He says (Brief, p. 29): "While the bond for $200,000 and the assignments of error recite the names of all the parties below in the title, yet the indorsements show that the appeal was in-

tended to be taken against the Attorney General and no one else."

The indorsement of parties on the supersedeas bond is, "Charles U. Cotting and Francis L. Higginson *vs.* Louis C. Boyle," and on the assignments of error it is, "Charles U. Cotting and Francis L. Higginson *vs.* Louis C. Boyle, &c."

Now, while in both of these indorsements, the only defendant named is Louis C. Boyle, yet in one of them the characters "&c." indicate that the parties filing that paper had in mind other parties defendant than Louis C. Boyle. From lack of space on the back of papers, the practice is to abbreviate the title in making the indorsements as much as possible. In the absence of a statute or rule of court,—and we have been unable to find any requiring the names of all parties to be set out in the indorsement,—there is nothing to condemn in this practice. The sole purpose of an indorsement on a paper is to facilitate its filing and use in the cause in which it is to be filed. The intention of a party in indorsing a paper is to carry out this purpose, and the law will not impute to him any other intention in making it, as contended by appellee.

It was said by the court in the case of *Miltenberger v. Logansport O. C. & S. R. R. Co.*, 106 U. S. (l. c.) 305:

"The appellees insist that the appeal should be dismissed for the alleged reason that the parties have not been named as either appellants or appellees on the docket of this court or in the transcript. But the order of January 22, 1879, allows the claims, specifying the persons to whom allowed, and the amounts, and the body of the order states that the plaintiffs in the cross-suit pray an appeal to this court; and the decree of July 3, 1879, orders the payment of the claims allowed by the order of January 22, 1879, and contains a prayer by the plaintiffs in the cross-suit for an appeal from said decree. These were appeals in open court, not requiring citations, and the order and the decree appealed from sufficiently designated all the appellees by name, and the appeals were appeals from the whole of the order and the whole of the decree."

But, even though it might be said that the indorsements referred to show that the appeal was intended to be taken against the Attorney General and no one else, as he contends, yet, as was said in the case of *Milner v. Meek*, 95 U. S. 252–258, already cited, "*Milner alone appealed; but his appeal brings up so much of the case and such of the parties as are necessary for the determination of his rights.*"

It is submitted that the record, of which we have made extracts in the preceding pages (pp. 2 and 3), shows that Louis C. Boyle is not, and was not intended to be the sole appellee on this appeal.

The *pro confesso* decree contains the names of all the parties, both in the title and in the body of the decree.

In the final decree the parties are all named in the title, and they are named by reference in the body of the decree. The defendant the Kansas City Stock Yards Company is expressly named in the body of the decree. It is recited in the decree that an appeal is allowed to complainants from the order of the court dismissing the bill in each of the two cases. The appeal, not being allowed as against any particular defendant, was allowed against all who would be affected by it.

Milner v. Meek, 95 U. S. 252–258.

The assignment of errors names all the defendants in the title, while in many of the assignments the Kansas City Stock Yards Company is named as a party.

In the $200,000 supersedeas bond, executed by the Kansas City Stock Yards Company, the defendants are all named in the title. It is dif-

ficult to see on what theory the court in its final decree required the Stock Yards Company to execute this bond, if it did not regard it as a party to the appeal.

In all the other papers filed in this appeal, viz., the petition and allowance of appeal, the appeal bond, and the order enlarging the time to docket the appeal in this court, the names of all the defendants are set out in the title.

The citation does not contain the title.

The indorsement of the parties on all of the papers except the supersedeas bond, gives the names of the defendants either as "Louis C. Boyle *et al.*" or "Louis C. Boyle, *&c.*," showing that Louis C. Boyle is not the only defendant in the mind of appellants. The indorsement on the supersedeas bond, as already noted, gives only the name of Louis C. Boyle as defendant.

The motion to advance filed in this court by appellee, Louis C. Boyle, on or about October 24th, 1898, and which was served upon the counsel of the complainants and the counsel of the Kansas City Stock Yards Company, Charles F. Morse, Harry P. Child, Eugene Rust, and Elliott

E. Richardson, had the names of all the defendants set out in the title, as follows:

"IN THE SUPREME COURT OF THE UNITED STATES.

Charles U. Cotting, *Complainant*,
vs.
Kansas City Stock Yards Company, a corporation, Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, *Defendants.*

No. 237.
OCTOBER TERM, 1898.

Francis Lee Higginson, *Complainant*,
vs.
Kansas City Stock Yards Company, a corporation, Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, *Defendants.*

(Causes 7427 and 7453, U. S. C. C. Dist. of Kansas, First Division,—Consolidated.)"

The counsel of the complainants, and also the counsel of the said Kansas City Stock Yards Company, Harry P. Child, Eugene Rust and Elliott E. Richardson, accepted service in writing of the notice of said motion; and when said notice and motion were so filed in this court by the appellee, Louis C. Boyle, such acceptance in writing was not only notice that the appeal was taken and pending in this court, but a waiver of service of any citation. "An indorsement by the counsel of the defendant in error on a bond given as security for costs on the writ of error is a waiver of service of a citation."

Pierce v. Cox, 9 Wall. 786.
2 Foster Fed. Pr., § 484, p. 1044.

After the final decree of October 28th, 1897, the Kansas City Stock Yards Company executed the supersedeas bond of $200,000, (Extracts, pp. 71, 72,) and had the same duly approved and filed. This was after the appeal in open court. Thereby the company had ample notice of the appeal, admitted itself a party thereto, and waived service of a citation, if one were necessary. By such action on its part, it is before this court, as a party to the appeal.

2 Foster's Fed. Pr., *supra.*

A general appearance in the Supreme Court without moving to dismiss is also a waiver of service of any citation. *U. S. v. Armejo*, 131 U. S. App. lxxxii; *Pierce v. Cox, supra; Buckingham v. McLean*, 13 How. 150; *Radford v. Folsom*, 123 U. S. 725.

4. *Giving to the facts in the record as to naming the parties, to which appellee refers, all the force which he contends they should have on the question as to appellant's intention as to bringing the appeal against him alone, yet, under the authority of Milner v. Meeks, 95 U. S. 258, Miltonberger v. Logansport Rld. Co., 106 U. S. 305, and the other cases cited herein, all parties necessary for the determination of this appeal are before this court.*

VI.

THE CASE OF "FROW v. DE LA VEGA," 15 WALL. 522, NOT APPLICABLE TO THE APPEAL HEREIN.

On page 14 of the brief of the appellee, Louis C. Boyle, the case of *Frow v. De La Vega*, 15 Wall. 552, is cited as decisive upon the contention that the dismissal of the bills in the court below applies as against all the defendants below, although the costs were taxed in favor of the Attorney General alone. (Extracts, pp. 56–58.) That case differs in many respects from this appeal. In the case cited, the party against whom the decree *pro confesso* was taken appealed. In this case, it appears from the allegations of the bills in the record that the Kansas City Stock Yards Company, its officers and employes, enforced the Kansas act of March 3d, 1897, (claimed to be void by the appellants,) through fear of criminal proceedings threatened by the appellee, Louis C. Boyle, the Attorney General of the State of Kansas. Neither the Stock Yards Company, nor Charles F. Morse, Harry P. Child, Eugene Rust, nor Elliott E. Richardson, the officers and employes of said company, make any complaint against the decree *pro confesso* taken against them. In the Frow case, it

is said that the defaulting defendant, by his default and the decree *pro confesso* against him, lost his standing in court; "that he will not be entitled to service of notices in the cause, nor to appear in any way; that he can adduce no evidence; and that he cannot be heard at the final hearing."

Admitting, for the purpose of the argument only, that a final decree dismissing the bills of the complainants properly framed, would dismiss the bills as to the defendants in default, as well as to the appellee, Louis C. Boyle, yet, as without objection the decree *pro confesso* was entered and is not now challenged and has never been challenged by any of the defaulting defendants or their counsel, can it be said to be of no force or effect? If the appellee, Louis C. Boyle, had called attention in the court below to any incongruity in the decrees taken against the defendants below, the court might have so framed the final decree as to dismiss the bills against the defendants in default, as well as the appellee, Louis C. Boyle, but this was not done. Can the appellee, Louis C. Boyle, in this court complain now of the decree *pro confesso* taken against the Kansas City Stock Yards Company and its officers

and employes, who were made defendants? We think not. If the Kansas City Stock Yards Company, its officers and employes, who were defendants below, could not, after their default, "appear in any way in the court below, or adduce any evidence, or be heard at the final hearing," can it be said under the decrees that were taken, without any objection by the appellee, Louis C. Boyle, that they can now be heard in this court under the ruling in *Frow v. De La Vega, supra?* If they cannot be heard here, are they or either of them necessary parties in this court?

Irregularities, if any occurred in the proceedings as to the decree *pro confesso*, are not now before the court for adjudication. The parties against whom such decree was rendered are not complaining.

VII.

CONCLUSION.

In conclusion, it may be said that, even if the appeal had not been duly allowed in open court, thus dispensing with the necessity of a citation, the facts are that all the complainants joined in the appeal.

Defendant Louis C. Boyle was confessedly served with notice by the citation. He also entered an appearance at this term of court by filing a motion to advance the hearing of this appeal. His entry of appearance for that motion was general and not special "for the purposes of the motion only," and his subsequent withdrawal of that motion does not have the effect of withdrawing this appearance.

The Kansas City Stock Yards Company, by giving the supersedeas bond for $200,000, in conformity with the conditions of the decree, thus acknowledged its notice of the appeal and made itself a party thereto.

The other defendants, Charles F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson, were really nominal parties only, being officials

of the defendant Stock Yards Company, and hence were not necessary parties to the appeal.

Further, the Kansas City Stock Yards Company, Charles F. Morse, Harry P. Child, Eugene Rust and Elliott E. Richardson accepted notice in writing of the motion of appellee, Louis C. Boyle, to advance the appeal for an early hearing in this court, and thereby entered their general appearance in this court. They are not complaining of the failure to issue any citation against them, or the want of notice of the appeal. In this connection we also call attention to the general appearance to the appeal on file in this court, of Wallace Pratt, as counsel for the Kansas City Stock Yards Company, Charles F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson. Therefore, these parties are before this court upon their voluntary appearance herein, after having had full notice of the appeal.

If there are any defects in the indorsements, bond, or other proceedings, the appellants are entitled under §§ 1005 and 1012, Rev. Statutes of the United States, (2d ed., 1878,) to remedy the same by proper amendments.

Insurance Co. v. Pendleton, 115 U. S. 339.
Walton v. Marietta Chair Co., 157 U. S. 342.

However, it is not necessary to press these points, in view of the fact that the appeal was prayed and allowed in open court, at the time of rendering the decree, as recited therein. (Extracts, pp. 56, 57.)

Respectfully submitted.

B. P. WAGGENER AND
ALBERT H. HORTON,

Counsel for Charles U. Cotting and Francis Lee Higginson, Appellants.

No. 237. 413 7

FILED
JAN 16 1899
JAMES H. McKENNEY,
Clerk.

Bf. of Waggener & Horton for App

IN THE

Supreme Court of the United States.

Filed Jan. 16, 1899.

CHARLES U. COTTING, *Appellant*,

vs.

KANSAS CITY STOCK YARDS COMPANY, A CORPORATION, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON, AND LOUIS C. BOYLE, AS ATTORNEY GENERAL OF THE STATE OF KANSAS, *Appellees*. — IN EQUITY.

FRANCIS LEE HIGGINSON, *Appellant*,

vs.

KANSAS CITY STOCK YARDS COMPANY, A CORPORATION, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON, AND LOUIS C. BOYLE, AS ATTORNEY GENERAL OF THE STATE OF KANSAS, *Appellees*. — IN EQUITY.

No. 237, OCTOBER TERM, 1898.

(Causes 7427 and 7453, U. S. C. C. Dist. of Kansas, First Division,—Consolidated.)

APPELLANTS' BRIEF,

IN SUPPORT OF THEIR MOTION FOR A. A. GODARD, THE PRESENT DULY ELECTED, QUALIFIED AND ACTING ATTORNEY GENERAL OF THE STATE OF KANSAS, TO BE SUBSTITUTED IN THE PLACE OF LOUIS C. BOYLE, THE FORMER ATTORNEY GENERAL OF SAID STATE, AS A PARTY HEREIN.

B. P. WAGGENER AND
ALBERT H. HORTON,
Counsel for Charles U. Cotting and Francis Lee Higginson, Appellants.

KRAMER & CO., TOPEKA

IN THE

Supreme Court of the United States.

CHARLES U. COTTING, *Appellant*, *vs.* KANSAS CITY STOCK YARDS COMPANY, A CORPORATION, ET AL., *Appellees*.	No. 237. OCTOBER TERM, 1898.
FRANCIS LEE HIGGINSON, *Appellant*, *vs.* KANSAS CITY STOCK YARDS COMPANY, A CORPORATION, ET AL., *Appellees*.	

NOTICE.

To Hon. A. A. Godard, as Attorney General of the State of Kansas:

You are hereby notified that the appellants above named will move the Supreme Court of the United States, at its rooms at the Capitol, in Washington, D. C., on Monday, January 16th, 1899, at twelve o'clock, M., or as soon thereafter as counsel can be heard, for an order substituting you as Attorney General of the State of Kansas in the place of Louis C. Boyle, the defunct Attorney General of the State of Kansas, as one of the appellees in said appeal; and you are further notified that said appellants will pray for an order of revivor of said appeal as against you as Attorney General of the State of Kansas, and that the said cause be continued against you and

the other appellees, excepting the said Louis C. Boyle, late Attorney General.

Annexed hereto is a copy of said motion, a copy of the affidavit of Albert H. Horton, and a copy of the brief in support of said motion.

B. P. WAGGENER and
ALBERT H. HORTON,
Counsel for Appellants.

January 10, 1899.

Accepted service of the above, January 10th, 1899.

A. A. GODARD,
As Attorney General of the State of Kansas.

I accept service of the above notice duly made me upon this 10th day of January, 1899.

WALLACE PRATT,
Counsel for the Kansas City Stock Yards Company, Charles F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson, Appellees.

IN THE SUPREME COURT OF THE UNITED STATES.

Charles U. Cotting, *Appellant*,
v.
Kansas City Stock Yards Company, a corporation, et al., *Appellees*.

Francis Lee Higginson, *Appellant*,
v.
Kansas City Stock Yards Company, a corporation, et al., *Appellees*.

No. 237.
October Term, 1898.

NOTICE.

To Louis C. Boyle, late Attorney General of the State of Kansas:

You are hereby notified that the appellants above named will move the Supreme Court of the United States, at its rooms at the Capitol, in Washington, D. C., on Monday, January 16th, 1899, at twelve o'clock, M., or as soon thereafter, as counsel can be heard, for an order substituting Hon. A. A. Godard, the present duly elected, qualified and acting Attorney General of the State of Kansas, in your place as one of the appellees in said appeal, (you having retired from said office and being no longer Attorney General of the State of Kansas); and also for a further order that Hon. A. A. Godard, as Attorney General of the State of Kansas, shall be required to enter his appearance as an appellee in said appeal, and that the said appeal shall be revived and continued in the name of A. A. Godard as Attorney General of the State of Kansas, and of the other appellees named above, excepting yourself.

Upon said hearing, the appellants will offer as

testimony the affidavit hereto annexed, in support of said motion.

B. P. Waggener,
Albert H. Horton,
Counsel for Appellants.

January 10, 1899.

State of Kansas, Shawnee County, *ss.*

J. M. Stark, being first duly sworn, deposes and says that he served a copy of the above notice upon Louis C. Boyle in Topeka, Shawnee county, Kansas, by delivering to him personally the same on January 11th, 1899. J. M. Stark.

Subscribed and sworn to before me, this 12th day of January, A. D. 1899.

[seal.] D. H. Martin, *Notary Public.*
(My commission expires Sept. 6th, 1899.)

IN THE SUPREME COURT OF THE UNITED STATES.

Charles U. Cotting, *Appellant*, *vs.* Kansas City Stock Yards Company, a corporation, Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, *Appellees.*	In Equity. No. 237. October Term, 1898.
Francis Lee Higginson, *Appellant*, *vs.* Kansas City Stock Yards Company, Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, et al., *Appellees.*	In Equity.

(Causes 7427 and 7453, U. S. C. C. Dist. of Kansas, First Division—Consolidated.)

MOTION TO SUBSTITUTE A. A. GODARD, AS ATTORNEY GENERAL OF KANSAS, IN PLACE OF THE FORMER ATTORNEY GENERAL AS A PARTY TO THE APPEAL.

And now come the appellants, by their counsel B. P. Waggener and Albert H. Horton, and show to this court that at the commencement of the above-entitled suits in the court below, Louis C. Boyle was the Attorney General of the State of Kansas; that his term of office expired on Monday, January 9, 1899, and that about noon of said day, he retired from said office and gave possession of the books, papers and records thereof to his successor, Honorable A. A. Godard; that on

said Monday, January 9, 1899, the said A. A Godard duly qualified as such Attorney General, and is now the duly elected, qualified and acting Attorney General of the State of Kansas, having full possession of said office and all of the books, papers and records thereof, and is authorized to be substituted in all actions and proceedings now pending against Louis C. Boyle, as Attorney General of the State of Kansas, as a party therein, to take his place as Attorney General of the said State of Kansas in all suits or other legal proceedings in the courts.

WHEREFORE, Said appellants suggest the official death of Louis C. Boyle as Attorney General of the State of Kansas on the record of this court, and pray an order that the Hon. A. A. Godard, as Attorney General of the State of Kansas, be substituted in said appeal in the place of Louis C. Boyle, the former Attorney General of the State of Kansas; and also, that said Hon. A. A. Godard, as said Attorney General, shall become a party appellee in said appeal within a time to be duly specified by the order of this court, and if the said Hon. A. A. Godard, as Attorney General of the State of Kansas, shall fail to become such party appellee within such specified time, then the said appellees shall be entitled to open the record, and on the hearing have the decrees in the above causes now pending in this court upon

appeal reversed, if the same be erroneous; and also pray for such further order against the said A. A. Godard, as Attorney General of the State of Kansas, as shall be meet and proper in the premises.

B. P. WAGGENER and
ALBERT H. HORTON,
Counsel for Appellants.

January 10, 1899.

IN THE SUPREME COURT OF THE UNITED STATES.

Charles U. Cotting, *Appellant*, *vs.* Kansas City Stock Yards Company, a corporation, Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, *et al.*, *Appellees.*	In Equity. No. 237. October Term, 1898.
Francis Lee Higginson, *Appellant*, *vs.* Kansas City Stock Yards Company, a corporation, Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, *et al.*, *Appellees.*	In Equity.

(Causes 7427 and 7453, U. S. C. C. Dist. of Kansas, First Division — Consolidated.)

Affidavit of Albert H. Horton.

State of Kansas, Shawnee County, *ss.*

Albert H. Horton, being first duly sworn, upon his solemn oath deposes and says:

That Louis C. Boyle was formerly Attorney General of the State of Kansas, and was such Attorney General until about noon, January 9, A. D. 1899; that about said time the said Louis C. Boyle retired from the said office of Attorney General, his term having then fully expired; that on said 9th day of January, 1899, Honorable A. A. Godard, who had been duly elected Attorney General of the State of Kansas at the November election in said State for 1898, duly qualified as such Attorney General, and is now the duly elected, qualified and acting Attorney General of the State of Kansas, having possession of said office and performing all the duties thereof.

And affiant further says, that he is informed and believes that the said A. A. Godard, as Attorney General of the State of Kansas, the suc-

cessor in office of Louis C. Boyle, will attempt to enforce, as against the Kansas City Stock Yards Company, its officers and agents, the provisions of chapter 240, Session Laws of 1897, complained of in the bills exhibited by the appellants in the court below, unless said chapter is declared by this court violative of the constitutional rights of the appellants, and as the said A. A. Godard, as Attorney General as aforesaid, is charged with the administration of said State enactment, he will so do unless prevented by the appeal pending in the above causes (consolidated) in this court.

ALBERT H. HORTON.

Subscribed and sworn to before me, this 10th day of January, 1899.

[SEAL.] D. H. MARTIN, *Notary Public.*

(My commission expires Sept. 6th, 1899.)

IN THE

Supreme Court of the United States.

CHARLES U. COTTING, *Appellant*, *vs.* KANSAS CITY STOCK YARDS COMPANY, A CORPORATION, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON, AND LOUIS C. BOYLE, AS ATTORNEY GENERAL OF THE STATE OF KANSAS, *Appellees.*	IN EQUITY.	No. 237, OCTOBER TERM, 1898.
FRANCIS LEE HIGGINSON, *Appellant*, *vs.* KANSAS CITY STOCK YARDS COMPANY, A CORPORATION, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON, AND LOUIS C. BOYLE, AS ATTORNEY GENERAL OF THE STATE OF KANSAS, *Appellees.*	IN EQUITY.	

(Causes 7427 and 7453, U. S. C. C. Dist. of Kansas, First Division.—Consolidated.)

APPELLANTS' BRIEF.

IN SUPPORT OF THEIR MOTION FOR A. A. GODARD, THE PRESENT DULY ELECTED, QUALIFIED AND ACTING ATTORNEY GENERAL OF THE STATE OF KANSAS, TO BE SUBSTITUTED IN THE PLACE OF LOUIS C. BOYLE, THE FORMER ATTORNEY GENERAL OF SAID STATE, AS A PARTY HEREIN.

I.

STATEMENT.

THE Kansas City Stock Yards Company, one of the appellees, is a private corporation of the

State of Kansas, incorporated for the purpose of "constructing, maintaining and operating union stock yards, and such buildings, hotels, railways, and switches as may be necessary for such purposes." The corporation commenced active operations on January 1, 1884. On December 31, 1896, there had been issued capital stock to the amount of the par value of $7,368,650.

In March, 1897, the Legislature of the State of Kansas passed an act relating to stock yards, published in the Session Laws of 1897, on pages 444–450, as chapter 240. This so-called act was approved March 3, 1897, and published March 12, 1897. The title of said chapter 240 is: "An act defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating all charges thereof, and removing restrictions in the trade of dead animals, and providing penalties for violations of this act."

The Kansas City Stock Yards Company put in force the rates and prices prescribed by the act of March 3, 1897, and thereafter Charles U. Cotting and Francis Lee Higginson, the appellants, exhibited their bills in equity against the Stock Yards Company, its officers and agents, and Louis

C. Boyle, as Attorney General of the State of Kansas, to enjoin them from enforcing the provisions of the act of 1897.

Cotting and Higginson are citizens and residents of Massachusetts. As stockholders in the corporation named, they asked a decree enjoining the enforcement of the rates for yardage and the services therewith connected, and also the prescribed rates for grain sold in the yards of the corporation, upon the ground that the statute as applied to said corporation is repugnant to the Constitution of the United States. These bills were numbered 7427 and 7453. They were consolidated on April 2, 1897.

The following is a quotation from the fourth paragraph of each of the bills:

"That the said so-called act is now by the said defendant, Louis C. Boyle, as Attorney General of the State of Kansas, alleged to be in full force, virtue and effect as a valid law of the State of Kansas, the said so-called act providing among other things that it shall be the duty of the Attorney General to prosecute all violations of the provisions thereof." (Extracts, pp. 8–31.)

Subsequently, final decrees were rendered against appellants, complainants below. (Extracts, pp. 56, 57.)

The present appeal is duly prosecuted by the appellants against the Kansas City Stock Yards Company, the Attorney General of the State of Kansas, and other appellees.

On January 9, 1899, the official term of Louis C. Boyle, the former Attorney General, expired, and A. A. Godard is now, and has been since January 9, 1899, the duly elected, qualified, and acting Attorney General of the State of Kansas.

This is a motion to substitute A. A. Godard, as Attorney General of the State of Kansas, for Louis C. Boyle, the former Attorney General.

Notices of the motion to make A. A. Godard, as Attorney General of the State of Kansas, a party to the appeal herein have been duly served upon such Attorney General, and also upon Wallace Pratt, the counsel of all the other appellees, except Louis C. Boyle, who, having retired from office, is no longer connected with this case. As a matter of courtesy only, we served a notice of this motion upon Mr. Boyle, but as he is not the Attorney General of the State of Kansas, he has no further standing in this court to make any motion in the present or future progress of this case, or to file any brief, or to make any oral argument.

A. A. Godard, the present Attorney General, has filed his appearance herein, and is present in the court, through his counsel, ex-Judge D. M. Valentine, to be heard. We therefore have nothing whatever to do with Mr. Boyle as to this motion or any other motion that we shall hereafter present in this case. He is *functus officio.*

II.

AN APPEAL WILL NOT ABATE BY THE EXPIRATION OF THE TERM OF OFFICE OF THE APPELLEE, WHERE, AS IN THIS CASE, THERE IS A CONTINUING DUTY IMPOSED BY STATUTE, IRRESPECTIVE OF THE INCUMBENT.

The suits commenced by Cotting and Higginson were not against Louis C. Boyle as an individual, but against him as Attorney General of the State of Kansas,— that is, against him as an officer of the State, to prevent him, not individually, but as Attorney General, from enforcing an alleged unconstitutional enactment to the injury of the rights of the appellants. This appeal is against the office of Attorney General,— not against an individual.

While the suits were not against the State of Kansas, within the meaning of the eleventh amendment to the Constitution of the United States, yet they were brought to prevent the Attorney General of the State of Kansas from performing the duty required of him by section 8 of the Kansas act of March 3, 1897. The same duty imposed upon Louis C. Boyle, when he was Attorney General of the State of Kansas, by said

section 8, is now imposed upon A. A. Godard, as Attorney General of that State.

The presumptions are that an officer of the State will comply with the statutes of the State. A. A. Godard, in assuming the official position as Attorney General of the State of Kansas, on January 9, 1899, was called upon to perform all the duties of the office of Attorney General, the same as Louis C. Boyle would have done had he continued in office. The duties of Louis C. Boyle, as Attorney General, at the expiration of his term of service passed over to A. A. Godard, as Attorney General of the State of Kansas. The burdens laid down by Louis C. Boyle, when he retired from the office, were officially taken up by A. A. Godard, his successor in that office. A. A. Godard stepped into the official shoes of Louis C. Boyle.

The final decree dismissing the appeals of Cotting and Higginson did not provide that costs should be taxed in favor of Louis C. Boyle as an individual. They were taxed in favor of the Attorney General of the State of Kansas. (Extracts, pp. 56, 57.)

It cannot be properly contended, we think, that this appeal abates by the expiration of the term

of office of Louis C. Boyle, the former Attorney General, as in this case, under the Kansas act of March 3, 1897, there is a continuing duty upon the office of the Attorney General, irrespective of the incumbent. We think proceedings of the character commenced in the court below may be commenced against one Attorney General and terminated with another.

It is the duty of the new Attorney General to enforce the act of 1897 if the act is valid. That is the question for this court to determine. The United States Circuit Court of Kansas held the law constitutional, even if applied to the Kansas City Stock Yards Company. This court has jurisdiction of the appeal, and the new Attorney General, A. A. Godard, is the officer of Kansas to represent the office of the Attorney General, or to appear in behalf of his office, or to enforce said act of 1897.

In *Thompson v. The United States*, 103 U. S. (13 Otto) 480, 484, it was observed: "If the resignation of the officer should involve an abatement, we would always have the unseemly spectacle of constant resignations and reappointments to avoid the effect of the suit."

In this case, if the person occupying the office of Attorney General may prevent the appellants from having the appeal heard by resigning or retiring from office, then we would have the unseemly spectacle "of constant resignations and reappointments" to avoid an alleged erroneous decree of the U. S. Circuit Court from being appealed or reviewed after appeal.

In *Bowden v. Johnson*, 107 U. S. 251–264, the following appears in the opinion of the court:

"In June, 1878, Orson Adams was appointed receiver of the bank, in place of Bowden, the plaintiff. The decree of the circuit court was not made till January, 1879. The appeal to this court was taken in the name of Bowden, Adams not having been substituted as plaintiff. Adams became surety in the appeal bond, and thus treated the decree as valid and adopted the appeal. Adams now moves to be substituted as plaintiff and appellant in place of Bowden, without prejudice to the proceedings heretofore had. The appellees and their counsel first heard of the appointment of Adams from the papers served on the motion for substitution, and the appellees now move to dismiss the appeal, on the ground that none was ever lawfully taken. We think that the motion of Adams should be granted, and that of the appellees denied. Adams prosecuted the appeal in the name of Bowden, who was and

is in life, and has a representative capacity. The power of amendment to this extent is authorized by section 954 of the Revised Statutes. It is of the same character as that exercised by this court in *Gates v. Goodloe*, where a writ of error was sued out by two bankrupts after their discharge in bankruptcy, and this court, on a motion to dismiss the writ, and a counter motion by the assignee in bankruptcy to be substituted as the plaintiff in error, denied the former motion and granted the latter." (101 U. S. 612.)

In *Gates v. Goodloe, supra*, it was decided by this court that: "Where the defendant in error moved to dismiss a writ sued out by three partners, two of whom had previously received their discharges in bankruptcy, *on the ground that the assignee alone could prosecute it, the court grants the application of the latter to be substituted as the plaintiff in error.*"

In *Insurance Company v. Costa*, 32 La. An. 1, it was decided that, "where the term of office of a public officer, appellant in his official capacity, expires pending an appeal, his successor in office must be substituted as appellant."

This is certainly the well-established rule where "there is a continuing duty irrespective of the incumbent."

2181 In the Circuit Court of the United States for the District of Kansas, First Division.

CHARLES U. COTTING, Complainant, *vs.* KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants.	In Equity.	No. 7427.
FRANCIS LEE HIGGINSON, Complainant, *vs.* KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants.	In Equity.	No. 7453.

Causes consolidated.

Assignment of Error.

Now, on this 28th day of October, A. D. 1897, come the said complainants and each of them, by Waggener, Horton & Orr and D. R. Hite, their solicitors, and say that the decree in said cause is erroneous and against the just rights of said complainants and each of them, for the following reasons:

First.

Because the evidence showed that the necessary operation of the act of March 3, 1897, as applied to the defendant stock yards company and its property used for stock-yards purposes, would be to abridge the privileges and immunities of said defendant company, a citizen of the United States, contrary to the provision of section 1 of the fourteenth amendment to the Constitution of the United States, and thereby abridging the privileges and immunities of said complainants as stockholders in said company.

2182 Second.

Because the evidence showed the defendant stock yards company, being a private corporation, was, prior to the enactment of the act of March 3, 1897, relating to stock yards, and complained of in the bills of complaint filed herein, in the unrestricted enjoyment of the use of private property, and that said act devoted the property of said corporation to a public use without providing any machinery by which the value of such use might or could be ascertained, and failed to provide any compensation for such taking of private property of the Kansas City Stock Yards Company for public use.

Third.

Because the evidence showed that the necessary operation of the said act of March 3, 1897, if applied to the business of the Kansas City Stock Yards Company or to that company, would deprive the complainants herein and the said defendant stock yards company, and each of them, of their property without due process of law, contrary to the provisions of section 1 of the fourteenth amendment to the Constitution of the United States.

Fourth.

Because the court erroneously found that the operation of the act of March 3, 1897, complained of in the bills of complaint filed herein, would not, even if applied to the business of the Kansas City Stock Yards Company and to said company, deprive the complainants of a fair and reasonable return on their capital invested in said company and in the property thereof, and that the said act was not in violation of the fourteenth amendment to the Constitution of the United States or any provision thereof.

Fifth.

Because the evidence showed that the act of March 3, 1897,
2183 complained of in bills of complaint filed herein, was and is repugnant to the provision of section 1 of the fourteenth amendment to the Constitution of the United States, which provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws."

Sixth.

Because the court erroneously found and held in the said decree that the business of the defendant stock yards company was not in whole or in part interstate commerce and that the property owned and used by said company was not an instrument of such commerce.

Seventh.

Because the evidence showed that the act of March 3, 1897, complained of in the bills of complaint filed herein, was and is repugnant to that part of section 8 of article 1 of the Constitution of the United States which provides that "the Congress shall have power to regulate commerce with foreign nations and among the several States."

Eighth.

Because the evidence showed that the act of March 3, 1897, complained of in the bills of complaint filed herein, if applicable to the Kansas City Stock Yards Company or to the business in which it is engaged, was and is repugnant to sections 4386, 4387, 4388, 4389, and 4390 of the Revised Statutes of the United States.

Ninth.

Because the evidence showed that the act of March 3, 1897, as applied to the Kansas City Stock Yards Company or to the business in which it is engaged, was and is repugnant to an act entitled "An act to regulate commerce," enacted by the Congress of the United States approved February 4, 1887.

2184

Tenth.

Because the evidence showed that the act of March 3, 1897, complained of in the bills of complaint filed herein, if applied to the Kansas City Stock Yards Company or to its business, was and is repugnant to an act of Congress of April 9, 1884, entitled "An act to establish a bureau of animal industry, and to prevent the exportation of diseased cattle," etc., and amendments and acts supplemental thereto.

Eleventh.

Because the evidence showed that all of the feed sold by the Kansas City Stock Yards Company was sold and paid for in the State of Missouri, and yet the court erroneously found and held that the prices of such feed so sold and paid for in the State of Missouri are regulated and controlled by the act of legislature of March 3, 1897, relating to stock yards and complained of in the bills of complaint filed herein, and also erroneously found and held that said act applied to the sales of feed so sold and paid for in the State of Missouri.

Twelfth.

Because the court erroneously found and held that under the said act of March 3, 1897, relating to stock yards and complained of the bills of complaint filed herein, that the prices at which merchandise, such as hay and grain, dealt in and sold by the stock yards company are controlled and regulated thereby, and that said stock yards company had no power or authority to sell hay or grain or any other article of feed in the State of Kansas at any price in excess of that prescribed by the said act of March, 3, 1897.

Thirteenth.

Because the court erroneously found and held that the act of March 3, 1897, relating to stock yards and complained of in
2185 the bills of complaint filed herein, has extraterritorial force, and that the prices of such articles as hay and grain sold by the Kansas City Stock Yards Company in the State of Missouri are fixed, regulated, and controlled thereby.

Fourteenth.

Because the court erroneously found that the said act of March 3, 1897, relating to stock yards and complained of in the bills of complaint filed herein, applied to charges made by the defendant

stock yards company for the use of its property situated wholly within the State of Missouri.

Fifteenth.

Because the court in its final decree and in the written decision handed down in support of said decree erroneously found and held that the act of March 3, 1897, relating to stock yards and complained of in the bills of complaint filed herein, was valid and applicable to all the business of the Kansas City Stock Yards Company, including all its business transacted in Kansas and in the State of Missouri, embracing also the charges for yardage in the State of Missouri and the sales of hay and grain made in the last-named State.

Sixteenth.

Because the evidence showed that the present value of the property of the Kansas City Stock Yards Company used exclusively for stock-yards purposes, as a completed structure or unit, was and is over $9,500,000, yet the special master in his report erroneously fixed the present value of the property of the Kansas City Stock Yards Company used and operated for stock-yards purposes as a dead structure and in segregated parts only, and such valuation in such form was erroneously approved by the court, and the court erroneously valued said property in the same way and refused to value said plant or property of the Kansas City Stock Yards Company as a completed structure or as a unit or as a going concern,
2186 and erroneously refused to value or consider as of any value the connections that said Kansas City Stock Yards Company had at and prior to the commencement of these suits and still has and then and now existing between such plant or system and the several beef and pork packing establishments connecting with and adjoining the said stock yards and the connections made and then and now existing between the said Kansas City Stock Yards Company and various common carries and railroads having connections therewith.

Seventeenth.

Because the court erroneously declined to find the value of the property of the Kansas City Stock Yards Company as a completed structure or as a unit or as an entirety or as a going concern, and adopted and acted upon the report of the special master as to the value of said property, which was appraised by him in segregated parts only.

Eighteenth.

Because the evidence showed that the tangible and intangible property of the Kansas City Stock Yards Company possessed a value in combination and from use which ought to have been recognized in estimating the present actual value of the plant and property of said company, and yet the court wholly ignored the value of the intangible property of said company and failed and

refused to give any value to the tangible and intangible property on account of its combination and use together as a unit in its operation and management.

Nineteenth.

Because the court (without any examination of the evidence offered and submitted upon the trial) founded its final decree solely and alone upon the findings of the special master filed in this court on August 24, 1897, and upon the alleged facts therein stated, when in truth and in fact findings numbers sixteen, forty-one, forty-three, forty-six, forty-seven, and forty-eight of said special master's report are not supported by the preponderance of the evi-
2187 dence or the weight of the evidence or by any competent evidence whatever, and all of the evidence in the record is contrary to and contradictory of each of said findings aforesaid.

Twentieth.

Because the court overruled the ninth exception of the complainants to the sixteenth finding of the master's report, when the evidence showed that the cash investment of the Kansas City Stock Yards Company in the property, the cost of which under the order of reference was to be ascertained by the master, amounted to the sum of $6,374,208.07.

Twenty-first.

Because the evidence showed that the cash investment made by the Kansas City Stock Yards Company in the property used and occupied by it for stock-yards purposes was at the commencement of these suits $6,374,208.07, when the court erroneously assumed, found, and held that such investment was only $3,852,361.81.

Twenty-second.

Because the court erroneously overruled the thirteenth exception of the complainants to finding number thirty-three of the master's report respecting the earnings and expenditures of the defendant stock yards company, when the said finding was contradicted by the stipulation of the parties filed herein and made "for the purpose of removing any question which may exist in regard to the manner in which the earnings of the stock yards company are or were disbursed."

Twenty-third.

Because said stipulation of the parties showed that the income of the Kansas City Stock Yards Company for 1896 amounted to the sum of $1,023,870.20, and that the expenditures out of the earnings for the same year for operating and maintaining its plant in a serviceable condition amounted to the sum of $537,543.70,
2188 and the court, wholly disregarding said stipulation, erroneously found and held said earnings and disbursements at

other and different sums and at a much less sum than that agreed to by the parties in writing.

Twenty-fourth.

Because the court erroneously overruled the sixteenth exception of the complainants to finding number thirty-five of the master's report, when the said finding was contrary to the stipulations of the parties produced before said master and also before said court.

Twenty-fifth.

Because the court erroneously overruled the eighteenth exception of the complainants to finding number thirty-seven of the master's report, when said finding was in direct conflict with the stipulation of the parties concerning the expenditures of the said Kansas City Stock Yards Company during the first five months of the year 1897.

Twenty-sixth.

Because the court erroneously overruled exception twenty-three of the complainants to finding number forty-three of the special master respecting the value of the property of the Kansas City Stock Yards Company, when the evidence showed that such property was at the commencement of these suits and still is of the value of more than $9,500,000.00, and said master's report erroneously showed the value of said property to be only $5,388,003.25, and the said court erroneously accepted the said so-called value of $5,388,003.25 as the present actual value of the said property in direct conflict with all of the evidence in the cause.

Twenty-seventh.

Because the court erroneously overruled exception twenty-eight of the complainants to finding number forty-eight of the special master respecting the market value of the outstanding capital stock of the defendant stock yards company, when the evidence
2189 upon this question showed that the market value of the outstanding stock during all of the year 1896 and immediately prior to the passage of the act of March 3, 1897, complained of in the bills of complaint filed herein, was more than $135 per share of the par value of $100, and the court thereon erroneously failed and refused to find that the value of the property of the Kansas City Stock Yards Company — based upon the amount for which the stock of the said corporation was bought and sold in the market.

Twenty-eighth.

Because the court erroneously declined to ascertain the value of the property of the defendant stock yards company by an examination of the evidence in the record, which conclusively showed the market value of the outstanding capital stock of the Kansas City Stock Yards Company during the year 1896 and immediately prior

to the passage of the act of March 3, 1897, complained of in the bills of complaint filed herein.

Twenty-ninth.

Because the court erroneously overruled the exceptions of the complainants to findings of the special master and each and all of said exceptions.

Thirtieth.

Because the evidence showed that the cost of reproducing the property of the stock yards company at the present time and also just before the commencement of these suits would have exceeded the sum of $9,500,000.00, and the court erroneously declined to give any consideration to such evidence in ascertaining the value of said property and refused to fix the value of said property at the present cost of reproduction.

Thirty-first.

Because the court erroneously found and held that the defendant company, under the operation of the act of March 3, 1897,
2190 complained of in the bills of complaint filed herein, would receive an annual net income of between five and six per cent. upon the present actual value of its property, when the testimony conclusively shows that the annual net income to said company under the operation of said act of March 3, 1897, if applied to the business of the Kansas City Stock Yards Company and the property used by it for stock-yards purposes, would be less than two per cent. upon the present actual value of said property.

Thirty-second.

Because in reaching the conclusion that the net income of the defendant company, under the operation of the act in question, would be between five and six per cent. upon the value of its property, the court erroneously included in such net income the whole income derived by the defendant company from sources not affected by the statute and not derived from the stock-yards business.

Thirty-third.

Because the court received and considered as testimony tending to show the present value of the property of the Kansas City Stock Yards Company used for stock-yards purposes the evidence of one C. D. Parker, produced as a witness by the defendant Louis C. Boyle, as attorney general of the State of Kansas, and subsequently based its decree on such and similar testimony, when the following evidence of the said Parker shows that he was not a proper expert witness as to the value of the property in controversy and was not competent to give any testimony in that regard :

"Q. You don't know anything about the value of the use of that land for stock-yards purposes?

A. No, sir.

Q. If another stock yards company should come in do you think it could procure as desirable a location in the bottoms?

A. I don't think it could.

Q. Now, state, if you can, what is the actual present value of the land for stock-yards purposes.

A. I don't know."

2191 All of the testimony of the said C. D. Parker as to the value of the property in controversy was received under the objections and subject to the exceptions of the complainants and each of them.

Thirty-fourth.

Because the court received and considered as testimony tending to show the present actual value of the property of the Kansas City Stock Yards Company used for stock-yards purposes the evidence of one E. S. Merrill, produced as a witness by the defendant Louis C. Boyle, as attorney general of the State of Kansas, and subsequently based its decree on such and similar testimony, when the following evidence of the said Merrill shows that he was not a proper expert witness as to the value of the property in controversy and was not competent to give any testimony in that regard:

"Q. What is the land worth in this tract, marked 'E,' concerning which you have testified, lying east of Water street, in its present condition, just as it stands today?

A. I don't know.

Q. Then, as I understand your testimony, you are not testifying about the value of the property as it stands today in its present condition?

A. Not improved property.

Q. You can answer that question by yes or no. You are not testifying of the value of 'E' as it stands today?

A. No.

Q. Now, then, in making up your value, with reference to the tract marked 'E,' you consider that as naked-acre property, without any improvements or without any business at all?

A. Yes, sir.

Q. That is the fact, is it?

A. Yes, sir."

All of the testimony of the said E. S. Merrill as to the value of the property in controversy was received under the objections and subject to the exceptions of the complainants and each of them.

Thirty-fifth.

Because the court received and considered as testimony tending to show the present actual value of the property of the Kan-

2192 sas City Stock Yards Company used for stock-yards purposes the evidence of one E. F. Allen, produced as a witness by the defendant Louis C. Boyle, as attorney general of the State of Kansas, and subsequently based its decree on such and similar testimony, when the following evidence of the said Allen shows that he was not a proper expert witness as to the value of the prop

erty in controversy and was not competent to give any testimony in that regard:

"Q. Do you know the present value of the use of this land by the stock yards company?

A. What they are worth to the stock yards company?

Q. Yes, sir.

A. No, sir.

Q. In making your estimates of value, you were not influenced by the value of the use to which the lands were put by the company?

A. No, sir.

Q. Not at all?

A. No, sir."

All of the testimony of the said E. F. Allen as to the value of the property in controversy was received under the objections and subject to the exceptions of the complainants and each of them.

Thirty-sixth.

Because the court received and considered as testimony tending to show the present actual value of the property of the Kansas City Stock Yards Company used for stock-yards purposes the evidence of one R. E. Cable, produced as a witness by the defendant Louis C. Boyle, as attorney general of the State of Kansas, and subsequently based its decree on such and similar testimony, when the following evidence of the said Cable shows that he was not a proper expert witness as to the value of the property in controversy and was not competent to give any testimony in that regard:

"Q. Have you sold any real estate in the vicinity of that tract?

A. No, sir.

Q. Have you bought any?

A. No, sir.

2193 Q. You have never had any transactions of buying or selling property around there?

A. No, sir.

Q. What, in your opinion, is that tract 'E' worth just as it is today?

A. For general purposes or for the purposes for which it is being used?

Q. For the purposes for which it is being used.

A. Certainly I could not answer that question.

Q. You don't know?

A. No, sir."

All of the testimony of the said R. E. Cable as to the value of the property in controversy was received under the objections and subject to the exceptions of the complainants and each of them.

Thirty-seventh.

Because the court received and considered as testimony tending to show the present actual value of the property of the Kansas City Stock Yards Company used for stock-yards purposes the evidence of

one C. W. Whitehead, produced as a witness by the defendant Louis C. Boyle, as attorney general of the State of Kansas, and subsequently based its decree on such and similar testimony, when the following evidence of the said Whitehead shows that he was not a proper expert witness as to the value of the property in controversy and was not competent to give any testimony in that regard:

"Q. What is this property marked 'A,' 'B,' 'C,' 'D,' and 'E' worth for stock-yards purposes?

A. I don't know.

Q. What is the value of this property for railroad purposes?

A. I don't know.

Q. What is the value of this property for packing-house purposes?

A. I don't know anything about the packing-house business.

Q. What would be the value of that property for packing-house purposes?

A. I have stated, I believe, that I don't know."

All of the testimony of the said C. W. Whitehead as to the value of the property in controversy was received under the objections and subject to the exceptions of the complainants and each of them.

Thirty-eighth.

2194 Because the court erred in giving any consideration whatever to any of the testimony produced by the defendant Louis C. Boyle, as attorney general of the State of Kansas, concerning the present actual value of the property of the Kansas City Stock Yards Company used and operated for stock-yards purposes in the States of Kansas and Missouri, including the structures thereon and personal property necessarily connected therewith, for that none of such testimony valued or considered the plant or property of the Kansas City Stock Yards Company as a unit or as a completed structure or as an entirety or as a going concern, but all of said testimony estimated and assessed the value of the lands thereof as naked land only, divested of all improvements, and then valued the improvements separate and apart from the land, and then valued the personal property separate and apart from the improvements or land; whereas the special master and also the court should have valued all the property of the Kansas City Stock Yards Company used for stock-yards purposes as a unit, taking into consideration the uses to which it is put and all the elements making up its aggregate value, and the value thereof ought not to have been confined to naked lands, improvements separate and apart therefrom, and personal property separate and apart from the improvements and lands, but the value of each part of said plant, if valued separately, should have included the proportionate part of the value resulting from the combination of the means by which the Kansas City Stock Yards Company's business was carried on, a value existing to an appreciable extent throughout the entire domain of its operation.

Thirty-ninth.

Because the court in the decree and in the opinion handed down in support thereof should have found and held that the act of March 3, 1897, relating to stock yards and complained of in the bills of complaint filed herein, was invalid and had no application to the business of the Kansas City Stock Yards Company carried on in the State of Kansas and in the State of Missouri, and therefore, notwithstanding such act, the court should have found and held that the business of the Kansas City Stock Yards Company was not subject to be regulated and controlled by said act, either in the State of Kansas or in the State of Missouri.

2195 Fortieth.

Because said act of March 3, 1897, relating to stock yards and complained of in the bills of complaint filed herein, is invalid as class legislation and as being directly contrary to the provisions of section 1 of the fourteenth amendment to the Constitution of the United States.

Forty-first.

Because the evidence showed that the stock yards owned and operated by the defendant company was the only stock yards within the State of Kansas to which the act of March 3, 1897, was intended to or could have any application.

Forty-second.

Because the court should have allowed the complainants one month after the filing of the report of the special master, on August 24, 1897, within which to prepare and file exceptions thereto instead of limiting the complainants to eighteen days within which to prepare and file said exceptions, as required by the order of the court entered herein on August 26, 1897, and duly excepted to at the time by the complainants.

Forty-third.

Because the court erred in entering an order in these causes bearing date of August 26, 1897, wherein the court specifically denied the application of these complainants made under equity rules 74 and 83 for one month in which to prepare and file exceptions to the report of the master filed on August 24, 1897; all of which was duly excepted to at the time by the complainants.

Forty-fourth.

Because the decree of the court and the written opinion of the court filed in support thereof are contrary to the weight of the evidence.

Forty-fifth.

Because the decree of the court and the opinion of the court filed in support thereof are contrary to all of the evidence.

Forty-sixth.

2196 Because the decree of the court and the opinion of the court filed in support thereof are contrary to law.

Forty-seventh.

Because the decree of the court should have been rendered in favor of the complainants and each of them upon the testimony submitted.

Wherefore the complainants pray that the said decree herein complained of be reversed, and that the said court may be directed to enter a decree in accordance with the prayer of the bills filed herein.

WAGGENER, HORTON & ORR,
D. R. HITE,
Solicitors for the Complainants.

Oct. 28th, 1897.

Endorsed: Nos. 7427 & 7453. Charles U. Cotting & Francis L. Higginson vs. Louis C. Boyle, &c. Assignment of error on appeal. Filed with and at the same time of the petition of appeal, this 5th day of November, 1897. Geo. F. Sharitt, clerk.

2197 In the Circuit Court of the United States for the District of Kansas, First Division.

CHARLES U. COTTING, Complainant, v. KANSAS CITY STOCK YARDS COMPANY, a Corporation; C. F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants.	No. 7427. In Equity.
FRANCIS LEE HIGGINSON, Complainant, v. KANSAS CITY STOCK YARDS COMPANY, a Corporation; C. F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants.	No. 7453. In Equity.

Know all men by these presents that the Kansas City Stock Yards Company, duly incorporated and existing under the laws of the State of Kansas, is held and firmly bound to the clerk of this court and his successors in office, for the benefit of whom it may concern, in the penal sum of two hundred thousand dollars, lawful money of the United States; for the payment of which, well and truly to

be made, it hereby binds itself, its assigns and successors, firmly by these presents.

Sealed with its corporate seal and dated the 28th day of October, A. D. 1897.

The condition of the above obligation is such that in the event the decree finally entered in the foregoing causes dismissing the bills is affirmed it will, on demand, pay to the parties or party entitled thereto all overcharges for yarding and feeding live stock at its stock yards in Kansas City, Kansas, and Kansas City, Missouri, which it may have exacted in violation of sections IV and V of the Kansas statute relative to stock yards, approved March 3rd, 1897, since a restraining order was first awarded herein, to wit, on the 13th day of March, 1897, and that it will in like manner pay such overcharges, if any, as it may continue to exact in violation
2198 of said statute during the pendency of said appeal, the said obligation aforesaid to become void if the statute in question shall be pronounced invalid by the Supreme Court of the United States.

[SEAL.] KANSAS CITY STOCK YARDS COMPANY,
By C. F. MORSE, *Vice-President & Gen. Manager.*

Attest: E. E. RICHARDSON, *Secretary.*

Approved and ordered to be filed and entered of record Nov. 2nd, 1897.

AMOS M. THAYER,
U. S. Circuit Judge, 8th Circuit.

Endorsed: Nos. 7427 & 7453. Charles U. Cotting & Francis L. Higginson *vs.* Louis C. Boyle. Bond of $200,000. Filed Nov. 6, 1897. Geo. F. Sharitt, clerk.

2199 In the Circuit Court of the United States for the District of Kansas, First Division.

CHARLES U. COTTING, Complainant,
vs.
KANSAS CITY STOCK YARDS COMPANY, a Corporation; C. F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants. } No. 7427. In Equity.

FRANCIS LEE HIGGINSON, Complainant,
vs.
KANSAS CITY STOCK YARDS COMPANY, a Corporation; C. F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants. } No. 7453. In Equity.

Know all men by these presents that we, Charles U. Cotting and Francis Lee Higginson, complainants, as principals, and L. E.

James and E. S. W. Drought, as sureties, are held and firmly bound unto Louis C. Boyle, as attorney general of the State of Kansas, in the full and just sum of fifteen hundred dollars ($1,500.00), to be paid to the said Louis C. Boyle, as attorney general of the State of Kansas, his administrators, executors, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 2nd day of November, in the year of our Lord one thousand eight hundred and ninety-seven.

Whereas lately, at a session of the United States circuit
2200 court for the district of Kansas, in a suit depending in said court between Charles U. Cotting and Francis Lee Higginson, complainants, and The Kansas City Stock Yards Company, a corporation; C. F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as attorney general of the State of Kansas, defendants, a final decree was rendered against the said Charles U. Cotting and Francis Lee Higginson, complainants, and in favor of Louis C. Boyle, as attorney general of the State of Kansas, one of said defendants, and the said complainants having obtained an allowance of appeal and filed a copy thereof in the clerk's office of the said court to reverse the said decree in the aforesaid suit, and a citation directed to the said Louis C. Boyle, as attorney general of the State of Kansas, citing and admonishing him to be and appear at the Supreme Court of the United States, to be holden at Washington, D. C., within thirty days from and after the 4th day of November, A. D. 1897:

Now, the condition of the above obligation is such that if the said Charles U. Cotting and Francis Lee Higginson, complainants, shall prosecute said appeal to effect and answer all costs and damages if they fail to make their appeal good, then the above obligation to be void; else to remain in full force and virtue.

CHARLES U. COTTING,
By WAGGENER, HORTON & ORR,
His Solicitors. [SEAL.]
FRANCIS LEE HIGGINSON,
By WAGGENER, HORTON & ORR,
His Solicitors. [SEAL.]
L. E. JAMES. [SEAL.]
E. S. W. DROUGHT. [SEAL.]

2201 Sealed and delivered in the presence of—
JOHN H. CRANDALL.

Approved by—
AMOS M. THAYER,
U. S. Circuit Judge.

STATE OF MISSOURI, } ss:
Jackson County, }

L. E. James, being first duly sworn, says that he is a resident of said State and worth fifteen hundred dollars over and above all his exemptions, debts, and liabilities.

L. E. JAMES.

Subscribed in my presence and sworn to before me this 2nd day of November, A. D. 1897.

[SEAL.] JOHN H. CRANDALL,
Notary Public, Jackson County, Mo.

STATE OF MISSOURI, } ss:
Jackson County, }

E. S. W. Drought, being first duly sworn, says that he is a resident of said State and worth fifteen hundred dollars over and above all his exemptions, debts, and liabilities.

E. S. W. DROUGHT.

Subscribed in my presence and sworn to before me this 2nd day of November, A. D. 1897.

[SEAL.] JOHN CRANDALL,
Notary Public, Jackson County, Mo.

(Endorsed:) Nos. 7427 & 7453. Charles U. Cotting & Francis Lee Higginson *vs.* Louis C. Boyle, &c. Appeal bond. Filed Nov. 6th, 1897. Geo. F. Sharitt, clerk.

2202 In the Circuit Court of the United States for the District of Kansas, First Division.

CHARLES U. COTTING, Complainant,
vs.
KANSAS CITY STOCK YARDS COMPANY, a Corporation; Louis C. Boyle, as Attorney General of the State of Kansas, *et al.*, Defendants. } No. 7427.

FRANCIS LEE HIGGINSON, Complainant,
vs.
KANSAS CITY STOCK YARDS COMPANY, a Corporation; Louis C. Boyle, as Attorney General of the State of Kansas, *et al.*, Defendants. } No. 7453.

Causes consolidated.

Order Concerning Original Papers.

Believing it to be necessary and proper, in my opinion, that the following original papers filed in the above cause as Exhibits C, K, M, Z, A A, P P, Q Q, 2, & 23 shall be inspected and considered by the Supreme Court of the United States upon the appeal of said cause to that court in connection with the transcript of the proceedings

in this court, it is hereby ordered that the clerk of this court duly enclose said original papers marked as exhibits as aforesaid in this cause in a proper sealed package for safe keeping and transportation, and that the same be properly and safely transmitted at the expense of the complainants by the clerk of this court to the clerk of the Supreme Court, at Washington, D. C., for the inspection and consideration of said original papers by the Supreme
2203–2205 Court upon said appeal, and that after the said cause so appealed is heard and finally decided by said Supreme Court, it is hereby ordered and directed that said original papers shall be safely returned again to the files of this court, to be kept on file with the other papers in said cause.

Dated this 6th day of November, A. D. 1897.

AMOS M. THAYER,
Circuit Judge.

I agree that the above order shall be made.

L. C. BOYLE,
As Attorney General.

Nov. 5th, 1897.

(Endorsed:) Nos. 7427 & 7453. Order. Filed Nov. 6th, 1897. Geo. F. Sharitt, clerk.

2206 In the Circuit Court of the United States for the District of Kansas, First Division.

CHARLES U. COTTING, Complainant, *v.* KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants.	In Equity. No. 7427.
FRANCIS LEE HIGGINSON, Complainant, *v.* KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants.	In Equity. No. 7453.

Causes consolidated.

Order for Enlargement of Time to Docket the Above Case and File the Record Thereof with the Clerk of the Supreme Court.

For good cause shown, it is hereby ordered that the time in which the complainants shall docket the above case and file the record thereof with the clerk of the Supreme Court of the United States is

enlarged by me for seventy days from and after the return day fixed in said citation on appeal to the Supreme Court, and the said complainants are hereby permitted to docket the above case and file the record thereof with the clerk of the Supreme Court of the United States by or before the period of seventy days from and after the date of the return day of said citation.

Dated November 23rd, 1897.

AMOS M. THAYER,
United States Circuit Judge.

I hereby consent to the granting and signing of said order.

L. C. BOYLE,
Attorney General.

November 23rd, 1897.

2207 & 2208 Endorsed: Nos. 7427 & 7453. Charles U. Cotting & Francis Lee Higginson *vs.* L. C. Boyle, att'y gen'l, *et al.* Order to enlarge time to docket & file record in Supreme Court. Filed Nov. 26, 1897. Geo. F. Sharitt, clerk.

2209 "EXHIBIT A."

Supreme Court of the United States (October Term, 1899).

No. 43.

CHARLES U. COTTING
vs.
A. A. GODDARD, Attorney General of the State of Kansas; The Kansas City Stock Yard Company, *et al.* } No. 7427.

FRANCIS L. HIGGINSON
vs.
A. A. GODDARD, Attorney General of the State of Kansas; The Kansas City Stock Yards Company, *et al.* } No. 7453.

1.

Hon. A. A. Goddard, attorney general of the State of Kansas.

DEAR SIR: Upon the hearing of the appeal the complainants will rely upon the 1st, 2nd, 3rd, 4th, and 5th assignments of errors, being virtually all based upon the ground that said chapter 240 of March 3, 1897, is contrary to and violative of the 14th amendment to the Constitution of the United States, if it be applied to the Kansas City Stock Yards Company; therefore said assignments No. 1 to 5, inclusive, pertain to the same matter and are substantially one assignment.

2.

They will also rely upon the 6th, 7th, 8th, 9th, and 10th assignments of error, being upon the ground that said chapter 240
2210 *os* violative of section 8, article 1, of the Constitution of the United States and the acts of Congress therein referred to.

3.

They will also rely upon the 11th, 12th, 13th, 14th, and 15th assignments of error, which contest the right of said chapter 240 to have any force or effect in the State of Missouri upon any sales of hay or grain in that State and upon any business transacted in that State. All of these said assignments are based virtually upon the theory that the act cannot have any extraterritorial force.

4.

They will also rely upon the 16th, 17th, 18th assignments of error because the property has not been valued by a special master or the United States circuit court as a completed structure or as a unit in its operation and management or as a going concern, and because said property as a completed structure or unit was or is worth over $9,500,000.

5.

They will also rely upon the 19th, 20th, 21st assignments of error because the matters referred to are contrary to and against the undisputed testimony in the case.

6.

They will also rely upon the 22nd, 23rd, 24th, and 25th assignments of error because the stipulations of the parties, control, and said matters therein referred to are contrary to and against such stipulations.

7.

They will also rely upon the 26th, 27th, 28th, 29th, 30th,
2211 31st, and 32nd assignments of error because said matters therein found and referred to are contrary to all the testimony.

8.

They will also rely upon the 33rd, 34th, 35th, 36th, 37th, and 38th assignments of error because all of the testimony therein referred to was wholly incompetent, irrelevant, and immaterial and was not entitled to any weight or consideration whatever.

9.

They will also rely upon the 39th, 40th, and 41st assignments of error because said chapter 240, Session Laws of 1897, is class legislation violative of the 14th amendment to the Constitution of the United States, and said act ought to have no application to the Kansas City Stock Yards Company nor to any business transacted by said stock yards in Missouri.

10.

They will also rely upon the 44th, 45th, 46th, and 47th assignments of error because, for the reasons heretofore given, the decree rendered is contrary to all of the testimony and is contrary to law

and this court should reverse the case and render judgment for the complainants upon the testimony submitted or direct further reference to the special master for a truthful and fuller report.

B. P. WAGGENER &
ALBERT W. HORTON,
Solicitors for Complainants.

2212 In the Supreme Court of the United States.

CHARLES U. COTTING and FRANCIS LEE HIGGINSON, Appellants,
vs.
A. A. GODDARD, Attorney General of the State of Kansas; The Kansas City Stock Yards Co., *et al.*, Appellees.

Stipulation.

It is hereby stipulated that the following parts of the record only shall be printed, the same being all that is necessary to be printed from the record for the consideration of assignments of errors on which the appellants rely, a copy of which is hereto attached, marked "Exhibit A," and made a part of these stipulations.

B. P. WAGGENER &
ALBERT W. HORTON,
Counsel for Complainants.
A. A. GODARD,
Attorney General of the State of Kansas.
WALLACE PRATT,
G. P. DANA, &
WM. BLACK,
Counsel for Other Defendants.

2213 The following pages of the record in case No. 43 are to be printed:

Pp. 1–23, inclusive (bill of Cotting and restraining orders).
Pp. 42–81, inclusive (bill of Higginson).
Pp. 83–85, inclusive (restraining order).
Pp. 94–98, inclusive (amendment to Cotting bill).
Pp. 100–105, inclusive (amendment to Higginson bill).
— 108, 109, inclusive (order of consolidation).
Pp. 308–310, inclusive (first hearing for preliminary injunction and the appointment of George W. Clark to take testimony upon all issues).
Pp. 323–329, inclusive (order for final hearing of preliminary injunction and order for bond of $75,000, together with the bond).
— 330–356, inclusive (special report of the master, together with all exhibits thereto).
— 422 (Exhibit E E and statement of purchases of hay and grain for 1896).
— 423 (Exhibit S S and stipulation about expenditures for the first five months of 1897).

2214 Pp. 424–433, inclusive (Exhibits F F and stipulation about disbursements of earnings for the years 1892–1896, inclusive).

Pp. 435–571, inclusive (testimony of Harry P. Child).
Pp. 572–726 (testimony of Charles F. Morse, omitting seven lines on page 726 concerning certain affidavits; also omitting Exhibits B B and C C on pages 1752–1756, inclusive, and 1757–1777, inclusive).
Pp. 727–779, inclusive (testimony of Charles F. Morse as a witness for the attorney general).
Pp. 780–872, inclusive (testimony of Eugene Rust).
Pp. 905–925, inclusive (testimony of George T. Williams).
Pp. 926–945, inclusive (testimony of Donald McNeal Palmer).
Pp. 946–962, inclusive (testimony of William N. Babcock).
Pp. 963–980, inclusive (testimony of J. W. Ferguson).
Pp. 981–988, inclusive (testimony of J. W. Tourtellot).
Pp. 989–1006, inclusive (testimony of J. B. Welsh).
Pp. 1007–1017, inclusive (testimony of W. J. Dalton).
Pp. 1018–1022, inclusive (testimony of Charles K. Wells).
2215 Pp. 1023–1038, inclusive (testimony of D. S. Young).
Pp. 1040–1452, inclusive (testimony of A. A. Whipple).
Pp. 1053–1079, inclusive (testimony of Albert Marty).
Pp. 1080–1082, inclusive (testimony of M. E. Burnett).
Pp. 1083–1088, inclusive (testimony of Thomas J. Hinton).
Pp. 1089–1097, inclusive (testimony of C. W. Schiller).
Pp. 1098–1105, inclusive (testimony of W. W. Atkin).
Pp. 1124–1129, inclusive (testimony of Thomas J. Haire).
Pp. 1176–1183, inclusive (testimony of Albert Dean).
Pp. 1194–1221, inclusive (testimony of E. S. Merrill).
Pp. 1222–1255, inclusive (testimony of C. D. Parker).
Pp. 1256–1282, inclusive (testimony of E. F. Allen).
2216 Pp. 1286–1301 (testimony of R. E. Cable).
Pp. 1302–1322, inclusive (testimony of C. W. Whitehead).
Pp. 1323–1342, inclusive (testimony of William S. Beard).
Pp. 1343, 1344, inclusive, and eight lines at top of page 1345, being part of the testimony of Elliott E. Richardson; also
Pp. 1382–1391, inclusive, being part of the testimony of Elliott E. Richardson.
Pp. 1392–1414, inclusive (testimony of William J. Stagg).
P. 1436 (testimony of Charles F. Morse to the close of his evidence on page 1444).
Pp. 1445 (testimony of George T. Williams).
Pp. 1560–1562, inclusive (of the testimony offered touching assessed valuation of stock-yards property).
Pp. 1566–1568, inclusive (testimony of J. B. Spellman).
(Testimony of E. W. Fish, beginning on p. 1569 and ending on page 1572.)
(Testimony of B. F. Tyler, beginning on p. 1572–1573.)
Pp. 1574–1585, inclusive (testimony of W. S. Tough).
2217 Pp. 1586–1588, inclusive (testimony of C. S. Gould).
Pp. 1589 (testimony of E. Peck, beginning on said page and ending on p. 1593).
Pp. 1593½ (testimony of N. B. Greer).
P. 1594 (first ten lines of testimony of Edward Jaquins on said

page; also testimony of said witness commencing on page 1598 to and including that given on page 1611).

Pp. 1677–1684, inclusive (regulations concerning cattle transportation, promulgated by the United States Department of Agriculture, dated January 27, 1897).

P. 1699 (Exhibit No. 3, found on said page).

P. 1702 (Exhibit No. 6, found on said page).

P. 1703 (Exhibit No. 7, found on said page).

P. 1735 (Exhibit P, found on said page).

Pp. 1741, 1742, 1743, 1744 (extracts from the senate and house journal of the State of Kansas of 1897).

P. 1896 (Exhibit No. 5).

P. 1904 (Exhibit No. 4).

Pp. 1967–2009, inclusive (exceptions of complainants).

Pp. 2032–2049, inclusive (opinion of Judge Foster).

2218 Pp. 2050, 2051 (order).

P. 2052 (decree).

Pp. 2056, 2057 (stipulation).

Pp. 2058, 2058½ (order).

Pp. 2059–2101, inclusive (answer of Louis C. Boyle to Higginson bill).

Pp. 2102–2144, inclusive (answer of Louis C. Boyle to Cotting bill).

Pp. 2145, 2146, inclusive (replication of Charles U. Cotting).

Pp. 2147, 2148 (replication of Higginson).

P. 2153 (copy of proceedings of United States circuit court at Leavenworth, October 18, 1897, and continuation of same on page 2154).

Pp. 2157–2167, inclusive (opinion of Judge Thayer).

Pp. 2170–2172, inclusive (final decree).

Pp. 2179, 2180 (appeal).

Pp. 2181, 2196 (assignment of errors.)

2219 Pp. 2197. 2198, inclusive (bond of complainant made under order of court).

Pp. 2199–2201, inclusive (appeal bond).

Pp. 2202, 2203 (order concerning original papers).

Pp. 2206, 2207, inclusive (order for enlargement of time).

2220 [Endorsed:] File No., 16,789. Supreme Court U. S., October term, 1899. Term No., 43. Chas. U. Cotting *et al.*, appellants, *vs.* A. A. Godard, as att'y gen'l of State of Kans., *et al.* Assignment of errors & stipulation to omit parts of record in printing. Filed Aug. 8th, 1899.

Endorsed on cover: Case No. 16,789. Kansas C. C. U. S. Term No., 43. Charles U. Cotting and Francis Lee Higginson, appellants, *vs.* A. A. Godard, as attorney general of the State of Kansas, and The Kansas City Stock Yards Company. Filed February 4th, 1898.

EXTRACTS FROM RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 971.

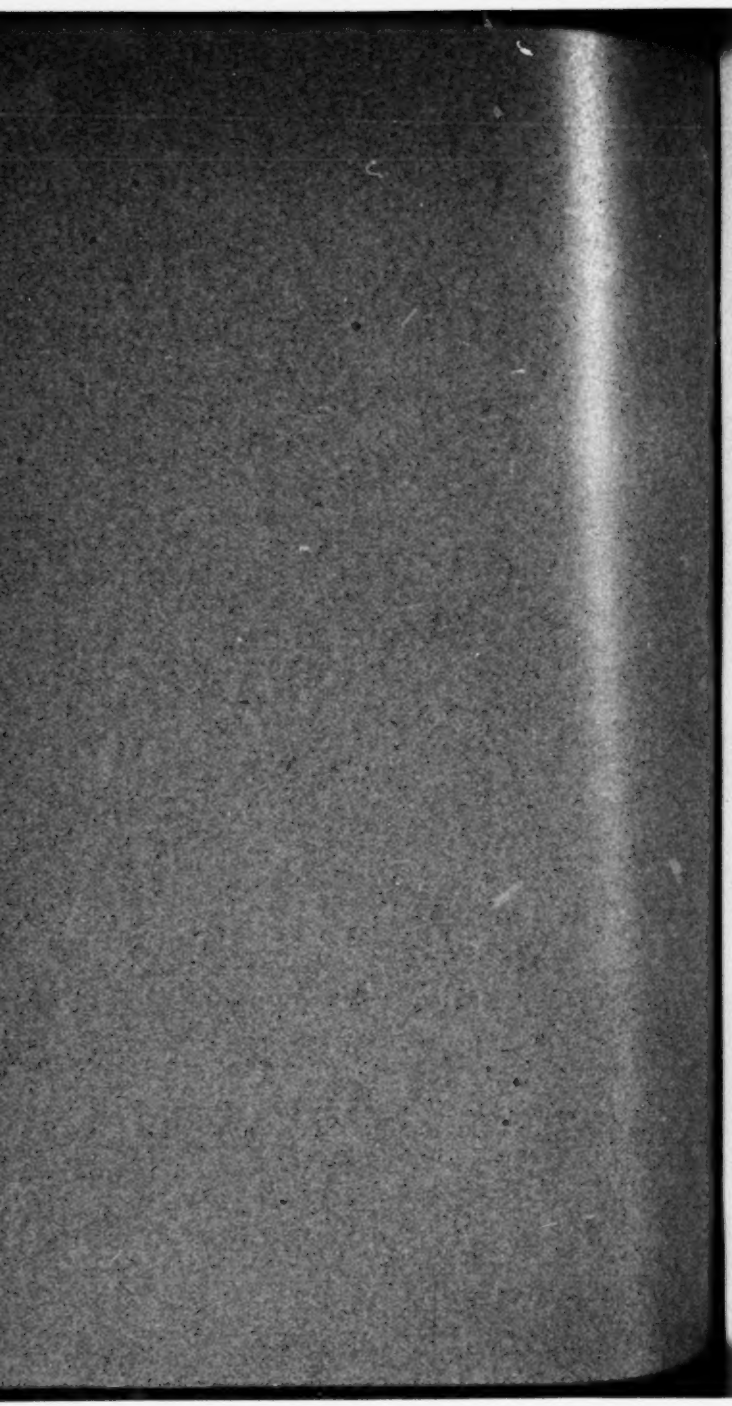
CHARLES U. COTTING ET AL., APPELLANTS,

vs.

A. A. GODARD, AS ATTORNEY GENERAL OF THE STATE OF KANSAS; KANSAS CITY STOCK YARDS CO., ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR DISTRICT OF KANSAS.

(16,789.)



(16,789.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 43.

CHARLES U. COTTING ET AL., APPELLANTS,

vs.

A. GODARD, AS ATTORNEY GENERAL OF THE STATE OF KANSAS; KANSAS CITY STOCK YARDS CO., ET AL.

PEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR DISTRICT OF KANSAS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 7, 1899.

(Record, p. 288.)

In the Circuit Court of the United States for the District of Kansas, First Division.

CHARLES U. COTTING, Complainant, *vs.* KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants.	}	No. 7427. In Equity.

Objections to Bill of Complaint.

On the call of this cause for hearing on the bill for a preliminary or temporary injunction the defendant Louis C. Boyle, as attorney general of the State of Kansas, objects to said bill and to any relief thereunder or evidence in support thereof on the several grounds following, to wit:

1. Said bill (except as to said new matter) does not state facts sufficient to constitute a cause of action in favor of the complainant and against this defendant.

2. The complainant has not by his said original bill made such a cause as entitled him in a court of equity to any relief from or against this defendant touching the matters contained in the said original bill or any of such matters.

3. In case the allegations in said original bill are true (which the defendant does not admit) said bill contains not any matter of equity whereon to sustain a writ of injunction as sought and prayed for in and by said original bill, and the complainant has not by his said original bill made such a case as to entitle him to any relief by injunction.

4. It appears by said bill that there are divers other persons who are necessary parties to said bill, but who are not made parties thereto, and in particular it appears that the State of Kansas is the only person or corporation having an interest in this controversy adverse to the complainant and the defendants Kansas City Stock Yards Company, a corporation; Charles F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson, all of said defendants being united in interest with the complainant, and this defendant has no personal interest whatever in said controversy other than such as pertains to every citizen of the State of Kansas, and said State of Kansas is not made a party to said bill.

5. It appears by the said bill that for all purposes of jurisdiction of this court the complainant is a citizen of the State of Kansas, and that there is no real and *bona fide* controversy between the complainant and The Kansas City Stock Yards Company, defendant, and its officers joined as defendants, and neither the sum nor the value

of $2,000, exclusive of interest and costs, nor any other sum or value is in dispute between them, and there is no real and *bona fide* controversy between the complainant and this defendant, and neither the sum nor the value of $2,000, exclusive of interest and costs, nor any other sum or value is in dispute between the complainant and this defendant.

6. The said bill is exhibited against this defendant and against several other defendants to the said bill for several and distinct and indefinite matters and causes which have no relation to each other, and in which this defendant is in no way interested or concerned and ought not to be implicated.

7. No paragraph of the fifteen original paragraphs of said bill states facts sufficient to constitute a cause of action in favor of complainant and against this defendant, and the complainant has not by any paragraph of the fifteen contained in said original bill made such a case as entitled him in a court of equity to any relief from or against this defendant touching the matters contained therein or any of such matters.

8. And as to said new matter inserted as amendatory by leave of court as paragraph 8½, the same does not entitle the complainant in a court of equity to any relief from or against this defendant touching the matters therein contained or any of said matters, because if said matters are true the complainant may have plain, adequate, and complete relief at law in the ordinary course thereof, and if said matters are true this defendant is improperly made a party to this suit and ought to be dismissed therefrom, and this action ought to be dismissed for want of jurisdiction and for want of equity.

9. And as to said new matter inserted as amendatory by leave of court as paragraph 8½, the same does not present any Federal question or any question under the Constitution, laws, or treaties of the United States, and the complainant being conclusively presumed for all purposes of jurisdiction a citizen of this State, this court has no jurisdiction as to said new matter inserted as paragraph 8½.

10. And as to said original bill as now amended by the insertion of new matter by leave of court as paragraph 8½, the same does not entitle the complainant to any relief in a court of equity from or against this defendant touching the matters contained in the said original bill as now amended or any of such matters.

11. And as to said new matter inserted as paragraph 8½, as an amendment to said original bill, the same is entirely inconsistent with and contradictory of the matters stated in said original bill, and if such new matter be insisted upon this cause ought to be dismissed for want of jurisdiction, and this defendant so prays.

12. No temporary injunction ought to be granted, for the further reason that neither the State of Kansas nor the public can be protected by any bond running to this defendant, and such bond cannot properly run to the State of Kansas, because the State is not a party to this action, and there is no authority for a bond running to the State of Kansas.

Wherefore this defendant prays that the temporary restraining order heretofore granted in this case be vacated and set aside, and

that the application of the complainant for a temporary or preliminary injunction be refused and denied, and that the complainant's bill be dismissed.

L. C. BOYLE,
As Attorney General of the State of Kansas, Defendant.

(Endorsed:) No. 7427. Objections to bill of complaint. Filed April 3, 1897. Geo. F. Sharitt, clerk.

(Record, p. 292.)

In the Circuit Court of the United States for the District of Kansas, First Division.

FRANCIS LEE HIGGINSON, Complainant, *vs.* KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants.	No. 7453. In Equity.

Objections to Bill of Complaint.

On the call of this cause for hearing on the bill for a preliminary or temporary injunction the defendant, Louis C. Boyle, as attorney general of the State of Kansas, objects to said bill and to any relief thereunder or evidence in support thereof on the several grounds following, to wit:

1. Said bill (except as to said new matter) does not state facts sufficient to constitute a cause of action in f[illegible]f the complainant and against this defendant.

2. The complainant has not by his said original bill made such a case as entitled him in a court of equity to any relief from or against this defendant touching the matters contained in the said original bill or any of such matters.

3. In case the allegations in said original bill are true (which the defendant does not admit) said bill contains not any matter of equity whereon to sustain a writ of injunction, as sought and prayed for in and by said original bill, and the complainant has not by his said original bill made such a case as to entitle him to any relief by injunction.

4. It appears by said bill that there are divers other persons who are necessary parties to said bill, but who are not made parties thereto, and in particular it appears that the State of Kansas is the only person or corporation having an interest in this controversy adverse to the complainant and the defendants Kansas City Stock Yards Company, a corporation; Charles F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson, all of said defendants being united in interest with the complainant, and this defendant

has no personal interest whatever in said controversy other than such as pertains to every citizen of the State of Kansas, and said State of Kansas is not made a party to said bill.

5. It appears by the said bill that for all purposes of jurisdiction of this court the complainant is a citizen of the State of Kansas, and that there is no real and *bona fide* controversy between the complainant and The Kansas City Stock Yards Company, defendant, and its officers joined as defendants, and neither the sum nor the value of $2,000, exclusive of interest and costs, nor any other sum or value is in dispute between them, and there is no real and *bona fide* controversy between the complainant and this defendant, and neither the sum nor the value of $2,000, exclusive of interest and costs, nor any other sum or value is in dispute between the complainant and this defendant.

6. The said bill is exhibited against this defendant and against several other defendants to the said bill for several and distinct and indefinite matters and causes which have no relation to each other, and in which this defendant is in no way interested or concerned and ought not to be implicated.

7. No paragraph of the fifteen original paragraphs of said bill states facts sufficient to constitute a cause of action in favor of complainant and against this defendant, and the complainant has not by any paragraph of the fifteen contained in said original bill made such a case as entitled him in a court of equity to any relief from or against this defendant touching the matters contained therein or any of such matters.

8. And as to said new matter inserted as amendatory by leave of court as paragraph 8½, the same does not entitle the complainant in a court of equity to any relief from or against this defendant touching the matters therein contained or any of said matters, because if said matters are true the complainant may have plain, adequate, and complete relief at law in the ordinary course thereof, and if said matters are true this defendant is improperly made a party to this suit and ought to be dismissed therefrom, and this action ought to be dismissed for want of jurisdiction and for want of equity.

9. And as to said new matter inserted as amendatory by leave of court as paragraph 8½, the same does not present any Federal question or any question under the Constitution, laws, or treaties of the United States, and the complainant being conclusively presumed for all purposes of jurisdiction a citizen of this State, this court has no jurisdiction as to said new matter inserted as paragraph 8½.

10. And as to said original bill as now amended by the insertion of new matter by leave of court as paragraph 8½, the same does not entitle the complainant to any relief in a court of equity from or against this defendant touching the matters contained in the said original bill as now amended or any of such matters.

11. And as to said new matter inserted as paragraph 8½ as an amendment to said original bill, the same is entirely inconsistent with and contradictory of the matters stated in said original

bill, and if such new matter be insisted upon this cause ought to be dismissed for want of jurisdiction, and this defendant so prays.

12. No temporary injunction ought to be granted, for the further reason that neither the State of Kansas nor the public can be protected by any bond running to this defendant, and such bond cannot properly run to the State of Kansas, because the State is not a party to this action and there is no authority for a bond running to the State of Kansas.

Wherefore this defendant prays that the temporary restraining order heretofore granted in this case be vacated and set aside, and that the application of the complainant for a temporary or preliminary injunction be refused and denied, and that the complainant's bill be dismissed.

L. C. BOYLE,
As Attorney General of the State of Kansas, Defendant.

(Endorsed:) No. 7453. Objections to bill of complaint. Filed April 3, 1897. Geo. F. Sharitt, clerk.

(Record, p. 298.)

In the Circuit Court of the United States for the District of Kansas.

CHARLES U. COTTING
vs.
KANSAS CITY STOCK YARDS COMPANY ET AL.

Now comes the defendant L. C. Boyle, att'y gen. of Kansas, and enters his appearance in the suit and to the complainant's bill of complaint herein.

To the clerk of said court:

Enter the above in the order book in equity of said court.

L. C. BOYLE,
Att'y Gen., Sol'r for Defendant.

(Endorsed:) No. 7427. Appearance of L. C. Boyle, att'y general. Filed April 5, 1897. Geo. F. Sharitt, clerk.

(Record, p. 299.)

In the Circuit Court of the United States for the District of Kansas.

FRANCIS LEE HIGGINSON
vs.
KANSAS CITY STOCK YARDS COMPANY ET AL.

Now comes the defendant L. C. Boyle, att'y gen. of Kansas, and enters his appearance in the suit and to the complainant's bill of complaint herein.

To the clerk of said court:

Enter the above in the order book in equity of said court.

L. C. BOYLE,
Att'y Gen., Sol'r for Defendant.

(Endorsed:) No. 7453. Appearance of L. C. Boyle, att'y general. Filed April 5, 1897. Geo. F. Sharitt, clerk.

(Record, p. 316.)

In the Circuit Court of the United States for the District of Kansas, First Division.

CHAS. U. COTTING, Complainant, *vs.* THE KANSAS CITY STOCK YARDS COMPANY, a Corporation; Chas. F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General for the State of Kansas, Defendants.	No. 7427. In Equity.

The demurrer of the above-named defendant, Louis C. Boyle, as attorney general, to the bill of complaint of the above-named Chas. U. Cotting, complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matter or things in the said bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, doth demur to said bill, and for cause of demurrer showeth:

First. That the said complainant hath not by his said bill made such a case as entitles him in a court of equity to any relief from or against this defendant touching the matters contained in the said bill or any of such matters.

Second. That in case the allegations in the said bill of complaint were true as therein set forth, which he does not admit, the said bill contains not any matter of equity whereon to sustain such writ of injunction as is sought and prayed for in and by said bill, nor hath he by the said bill made such a case as to entitle him to any relief by injunction.

Third. That it appears by the said bill that there — divers other persons who are necessary parties to the said bill, but who are not made parties thereto, and in particular it appears that the State of Kansas is the only person or corporation having an interest in this controversy adverse to the complainant and the defendants Kansas City Stock Yards Company, a corporation; Chas. F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson, all of said defendants being united in interest with the complainant, and this defendant has no personal interest whatever in said controversy other than such as pertains to every citizen of the State of Kansas, and said State of Kansas is not made a party to said bill.

Fourth. That it appears by the said bill that for all purposes of jurisdiction of this court the complainant is a citizen of the State of Kansas, and that there is no real *bona fide* controversy between the complainant and The Kansas City Stock Yards Company, defendant, and its officers joined as defendants, and neither the sum nor the value of $2,000, exclusive of interest and costs, nor any other sum or value is in dispute between them, and there is no real and *bona fide* controversy between the complainant and this defendant, and neither the sum nor the value of $2,000, exclusive of interest and costs, nor any other sum or value is in dispute between the complainant and this defendant.

Fifth. That the said bill is exhibited against this defendant and against several other defendants to the said bill for several and distinct and independent matters and causes which have no relation to each other and in which this defendant is in no way interested or concerned and ought not to be implicated.

Wherefore, and for divers other good causes of demurrer appearing in the said bill of complaint, this defendant doth demur thereto and to all other matters and things therein contained, and humbly prays the judgment of this honorable court whether he shall be compelled to make any further answer to said bill; and he prays to be hence dismissed with his reasonable cost in this behalf sustained.

I do hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

L. C. BOYLE,
Attorney General, Defendant.

STATE OF KANSAS,
District of Kansas, First Division, } *ss:*
County of Shawnee,

Louis C. Boyle, being duly sworn, does depose and say that he has read the foregoing demurrer to the bill of complaint in this suit, and the same is not interposed for the purpose of delaying said suit or any proceeding therein.

L. C. BOYLE.

Subscribed and sworn to by the said Louis C. Boyle this 21st day of June, A. D. 1897.

C. M. ROSS,
[SEAL.] *Ass't Sec'y of State.*

(Endorsed:) No. 7427. Chas. U. Cotting, complainant, *vs.* The Kansas City Stock Yards Company *et al.*, defendants. Demurrer. Filed June 21st, 1897. Geo. F. Sharitt, clerk.

(Record, p. 319.)

In the Circuit Court of the United States for the District of Kansas, First Division.

F. L. HIGGINSON, Complainant,
vs.
THE KANSAS CITY STOCK YARDS COMPANY, a Corporation; Chas. F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General for the State of Kansas, Defendants. } No. 7427. In Equity.

The demurrer of the above-named defendant, Louis C. Boyle, as attorney general, to the bill of complaint of the above-named F. L. Higginson, complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matter or things in the said bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, doth demur to said bill and for cause of demurrer showeth:

First. That the said complainant hath not by his said bill made such a case as entitles him in a court of equity to any relief from or against this defendant touching the matters contained in the said bill or any of such matters.

Second. That in case the allegations in the said bill of complaint were true as therein set forth, which he does not admit, the said bill contains not any matter of equity whereon to sustain such writ of injunction as is sought and prayed for in and by said bill, nor hath he by the said bill made such a case as to entitle him to any relief by injunction.

Third. That it appears by the said bill that there — divers other persons who are necessary parties to the said bill, but who are not made parties thereto, and in particular it appears that the State of Kansas is the only person or corporation having an interest in this controversy adverse to the complainant and the defendants, Kansas City Stock Yards Company, a corporation; Chas. F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson, all of said defendants being united in interest with the complainant, and this defendant has no personal interest whatever in said controversy other than such as pertains to every citizen of the State of Kansas, and said State of Kansas is not made a party to said bill.

Fourth. That it appears by the said bill that, for all purposes of jurisdiction of this court, the complainant is a citizen of the State of Kansas, and that there is no real *bona fide* controversy between the complainant and The Kansas City Stock Yards Company, defendant, and its officers, joined as defendants, and neither the sum nor the value of $2,000, exclusive of interest and costs, nor any other sum or value is in dispute between them, and there is no real and *bona fide* controversy between the complainant and this

defendant, and neither the sum nor the value of $2,000, exclusive of interest and costs, nor any other sum or value, is in dispute between the complainant and this defendant.

Fifth. That the said bill is exhibited against this defendant and against several other defendants to the said bill for several and distinct and independent matters and causes which have no relation to each other and in which this defendant is in no way interested or concerned and ought not to be implicated.

Wherefore, and for divers other good causes of demurrer appearing in the said bill of complaint, this defendant doth demur thereto and to all other matters and things therein contained and humbly prays the judgment of this honorable court whether he shall be compelled to make any further answer to said bill, and he prays to be hence dismissed with his reasonable cost in this behalf sustained.

I do hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

L. C. BOYLE,
Attorney General, Defendant.

STATE OF KANSAS,
District of Kansas, First Division, County of Shawnee, } ss:

Louis C. Boyle, being duly sworn, does depose and say that he has read the foregoing demurrer to the bill of complaint in this suit, and the same is not interposed for the purpose of delaying said suit or any proceeding therein.

L. C. BOYLE.

Subscribed and sworn to by the said Louis C. Boyle this 21st day of June, A. D. 1897.

C. M. ROSS,
[SEAL.] *Ass't Sec'y of State.*

(Endorsed:) No. 7453. F. L. Higginson, complainant, *vs.* The Kansas City Stock Yards Company *et al.*, defendants. Demurrer. Filed June 21st, 1897. Geo. F. Sharitt, clerk.

(Record, p. 2168.)

In the Circuit Court of the United States for the District of Kansas, First Division.

CHARLES U. COTTING, Complainant, *vs.* KANSAS CITY STOCK YARDS COMPANY, a Corporation; C. F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants.	No. 7427. In Equity.
FRANCIS LEE HIGGINSON, Complainant, *vs.* KANSAS CITY STOCK YARDS COMPANY, a Corporation; C. F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants.	No. 7453. In Equity.

Decree Pro Confesso.

The above causes having been brought on for hearing, and it appearing that the defendants The Kansas City Stock Yards Company, C. F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson were duly served with process in the foregoing suits more than twenty days before rules day of April, 1897, and the said defendants and each of them thereafter having failed to plead, answer, or demur to the bills of complaint filed herein and each of them, and as an order for a decree *pro confesso* was duly entered in this court against them and each of them more than thirty days prior to October 28th, 1897, thereupon the court orders, adjudges, and decrees that the said bills of complaint in the foregoing suits and each of them be taken *pro confesso* against the said defendants, The Kansas City Stock Yards Company, C. F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson, with costs to the complainants, to be taxed against said defendants last named and each of them.

October 28th, 1897.

AMOS M. THAYER,
U. S. Circuit Judge.

(Endorsed:) Nos. 7427 & 7453. Cotting *vs.* K. C. S. Y. Co. and Higginson *vs.* K. C. S. Y. Co. Decree *pro confesso*. Filed Oct. 28th, 1897. Geo. F. Sharitt, clerk.

File No., 16,789.

Supreme Court of the United States, No. 237, October Term, 1898.

CHARLES U. COTTING, Appellant, *v.* KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants.	No. 237, October Term, 1898.
FRANCIS LEE HIGGINSON, Appellant, *v.* KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants.	

(Causes 7427 and 7453, U. S. C. C., dist. of Kansas, first division, consolidated.)

Entry of Appearance.

Having received notice in due time of the appeal in the above causes (consolidated) pending in this court, I hereby enter my appearance in said appeal in the above court.

WALLACE PRATT,

Counsel of the Kansas City Stock Yards Company, Charles F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson, Defendants Below.

Endorsed: File No., 16,789. Supreme Court U. S., October term, 1898. Term No., 237. Appearance for certain appellees. Filed Dec. 17th, 1898.

File No., 16,789.

Supreme Court of the United States, No. 237, October Term, 1898.

In the Supreme Court of the United States.

CHARLES U. COTTING, Appellant, *v.* THE KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and A. A. Godard, as Attorney General of the State of Kansas, Appellees.	In Equity.
	No. 237, October Term, 1898.
FRANCIS LEE HIGGINSON, Appellant, *v.* THE KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and A. A. Godard, as Attorney General of the State of Kansas, Appellees.	In Equity.

Entry of Appearance.

Having been substituted as one of the appellees in the place of Louis C. Boyle, I hereby enter my appearance in the above cause and appeal.

A. A. GODARD,
As Attorney General of the State of Kansas.

D. M. VALENTINE, *Of Counsel.*

Endorsed: File No., 16,789. Supreme Court U. S., October term, 1898. Term No., 237. Appearance for appellee. Filed Feb. 4th, 1899.

DEC 2 1898
JAMES H. McKENNEY,
Clerk.

EXTRACTS FROM TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. ~~225~~ 434 1.

No. 7427. CHARLES U. COTTING
vs.
LOUIS C. BOYLE, &c.

No. 7453. FRANCIS L. HIGGINSON
vs.
LOUIS C. BOYLE, &c.

CASES CONSOLIDATED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, DISTRICT OF KANSAS, FIRST DIVISION.

RECORD FILED FEBRUARY 4, 1898.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 237.

No. 7427. CHARLES U. COTTING *vs.* LOUIS C. BOYLE, &c.

No. 7453. FRANCIS L. HIGGINSON *vs.* LOUIS C. BOYLE, &c.

Cases consolidated.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, DISTRICT OF KANSAS, FIRST DIVISION.

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I.

That your orator, Charles U. Cotting, is a resident and citizen of the state of Massachusetts, and is a stockholder in the Kansas City Stock Yards Company, being the owner, and in the possession of 250 shares of the capital stock of said corporation, which said shares of stock so held, owned and possessed by him, are of the full value of more than five thousand ($5,000) dollars, to wit, of the value of thirty thousand ($30,000) dollars; that your orator invested in, and became the owner of said stock in the said corporation for a valuable consideration to earn and obtain thereon a reasonable and a fair dividend or rate of interest on the actual value thereof; that since your orator became the owner and holder of said stock, up to this time, the said corporation has been so economically and successfully operated and managed, as to produce some profit to your orator, and to the other stockholders of said corporation, who have invested their money in said corporation and in the stock thereof; that your orator is entitled to demand and require that the said corporation shall continue to carry on its business in the future, as in the past, so that the said corporation, if possible shall earn a reasonable and fair dividend or interest on the present actual value of its property, so that your orator as a stockholder therein, shall receive some compensation for the use of his money and property invested in said corporation, and in the stock thereof, without prejudice to the rights of others, and for this purpose, and to this end your orator is entitled to demand of the said Kansas City Stock Yards Company, and the officers and agents thereof, that the said company shall prescribe, exact and collect such just and reasonable rates, charges and compensation from persons doing business with it, or making purchases of hay, corn or other property therefrom, as that the said corporation shall earn a fair and reasonable compensation or interest on the present actual value of its property, if it be possible so to do, in the lawful transaction of its business. That the amount involved in this suit and the matter in dispute exceeds, exclusive of interest and costs, the sum and value of two thousand dollars and the damages and losses which will accrue to your complainant if the so-called act hereinafter referred to shall be enforced in any respect will largely exceed, exclusive of interest and costs, the sum and value of two thousand dollars.

II.

That the Kansas City Stock Yards Company, defendant, is and for more than twenty years last past has been, a corporation duly created, organized and existing under the laws of the state of Kansas, and a citizen and resident thereof, and of the first division of said district, with power to construct, maintain and operate stock yards in this state and in the state of Missouri, and to own real estate for that purpose,

with authority also to erect and maintain buildings, hotels, railways, switches, yards, pens, and such other improvements as may be necessary for its purposes, and also with authority for receiving, shipping, yarding, feeding and otherwise caring for horses, mules, cattle and other stock at its yards in Kansas City, Kansas, and in Kansas City, Missouri, with the right of demanding, exacting, and collecting for its services performed, and for its property sold to others, fair compensation, and also such prices therefor as might be agreed upon by the parties interested; that the yards occupied by it in carrying on its business consist of about one hundred and sixty acres, about one hundred and twenty acres of which are situated in this state, and about forty acres thereof in the state of Missouri; that about sixty-five per cent. of the earnings of said corporation are derived from its business carried on in this state, and that about thirty-five per cent. thereof is derived from its business carried on in the state of Missouri; that, for a very large part of this real estate, the said corporation was compelled to pay large prices therefor, because it was absolutely necessary for its use to successfully carry on its business, and because the same was at the time of purchase occupied by a good class of buildings, which it was necessary to remove, and the land so formerly occupied by such buildings is now being used entirely for stock yards purposes; that the improvements at the stock yards consisting of buildings, railroad tracks, switches, viaducts, pens and other improvements are very extensive and maintained in a superior condition, the cattle pens alone covering about eighty acres, all of them either floored with plank, or paved with vitrified brick; that the corporation has hog sheds with a daily capacity of thirty thousand hogs, and sheep sheds with a daily capacity of twenty thousand sheep, and also stables for about four thousand horses and mules; that during the past five years the capacity of the yards of the corporation has been, to meet the growing demands of business, almost doubled, at a large expenditure of money; that the authorized capital stock of said corporation is seven million, five hundred thousand ($7,500,000) dollars, of which $7,368,650.00 on December 31, 1896, has been issued and all of which is paid up; that the present actual value of the property of said corporation, so employed for its stock yards, as aforesaid, is in excess of the value of seven million five hundred thousand ($7,500,000) dollars; that for the year 1896, the total receipts of stock at said stock yards were as follows, to wit:

1,714,532 cattle,
100,166 calves,
993,126 sheep,
2,605,575 hogs,
57,847 horses and mules,

making a total of all stock handled by said yards 5,471,446; that the gross earnings of the corporation for the year 1896 were one million, twenty-three thousand, eight hundred and seventy and $\frac{20}{100}$ dollars ($1,023,870.20); that the total expenditures were five hundred and forty-nine thousand, three hundred and fifty-one and $\frac{80}{100}$ ($549,351.80) dollars, all of which were necessary for the operation and maintenance of the property, leaving net earnings of four hundred and seventy-four thousand five hundred and eighteen and $\frac{40}{100}$ ($474,518.40) dollars, about six per centum on the capital stock of the corporation for that year; that the yards, pens, and most of the improvements of said stock yards have to be necessarily replaced or renewed about every five to seven years, costing large sums of money therefor, and consuming a large amount of the yearly earnings of the said corporation; that the charges now prescribed, exacted and collected by the corporation, and which have existed for several years, are as follows, to wit:

For driving, yarding, watering and weighing cattle, twenty-five cents per head; calves, ten cents per head, hogs, eight cents per head, and sheep, five cents per head; that such charges and prices are fair, reasonable and just, considering all conditions and the services rendered therefor, and only furnish reasonable compensation to the said defendant corporation; that all existing charges and prices of the corporation for hay, corn, and other grain sold or delivered by it, under the conditions and circumstances in which the same are sold and delivered and fed, and the care and attention given by the corporation to cattle and other stock in its yards, in connection with the sale, delivery and feeding of hay, corn and other grain, are fair, just and reasonable, and the operation of the stock yards under such rates, charges and prices, and the collection thereof, only permit the corporation to earn a fair and reasonable compensation or interest on the present actual value of its property, so necessarily occupied and used by it for stock yards business, and such earnings are about six per centum on the money invested in said corporation, after paying the operating expenses thereof, taxes, and the expenses of the necessary repairs, renewals and the maintenance of the same; that the charges for yardage and fees at the stock yards of the said corporation are the same as those of other stock yards similarly conducted, and the same as the stock yards at St. Louis, Missouri, East St. Louis and Chicago, Illinois, and Omaha, Nebraska; that said defendant corporation makes no charges whatever on any stock that is not sold in the yards when received from railroad companies, and said stock is subject to the order of the owner, and is delivered to the railroads or buyers without charge to the owner; that said stock yards so owned and operated by said corporation have been and are of great

pecuniary value and benefit to the stock raisers and shippers of Kansas, Missouri and adjacent states; that the location and operation of the stock yards of said corporation in this state and in Kansas City, Missouri, have induced large packing establishments to locate in Kansas City, Kansas, for the purpose of buying, killing and packing cattle and other stock, thereby furnishing an excellent and convenient market to the stock raisers and shippers of Kansas, Missouri and adjacent states; that fat cattle sold in Kansas City in 1896, netted an average of nine and three-fourths cents per hundred pounds more than the same stock sold in Chicago the same day, and that hogs netted nine cents more, and sheep seventeen cents more, and that the importance of the stock market at Kansas City to the producers, stock raisers, and shippers of Kansas, has been greatly increased by the successful operation of the large and extensive stock yards of said corporation at and near Kansas City, Kansas, and at and near Kansas City, Missouri.

III.

That Charles F. Morse, defendant, is a director, vice-president and general manager of the Kansas City Stock Yards Company, and the only managing director thereof, and, at the present time, in consequence of the absence of the president of said corporation in Europe, is also the acting president thereof, and has full authority to fix the rates and prices to be charged by said stock yards company and is a resident and citizen of the state of Missouri; that Harry P. Child is the assistant general manager of said corporation and a citizen and resident of the state of Missouri; that Eugene Rust, defendant, is the general superintendent of said corporation, and a resident and citizen of the state of Missouri; that Elliott E. Richardson, is the secretary of said corporation and a resident and citizen of the state of Kansas, and of the first division of said district; and that Louis C. Boyle, as attorney general of the state of Kansas, is a citizen and resident of the state of Kansas, and an inhabitant of the first division of said district, and the duly elected, qualified and acting attorney general of said state.

IV.

That on the third day of March, 1897, Honorable John W. Leedy, as governor of the state of Kansas, approved a certain so-called act of the legislature of said state, known as "Committee Substitute for House Bill No. 87" and entitled, "an act defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating the charges thereof, and removing restrictions in the trade of dead animals, and prescribing penalties for the violations of this act;" that in the said so-called act, it was

provided the same should take effect and be in force from and after its publication in the official state paper of the state of Kansas; that a certified copy of the said so-called act is hereto attached, marked exhibit "A" and made a part of this bill of complaint, to which reference is hereby made as if fully incorporated herein; that the said so-called act was published in the official state paper of the state on the 12th day of March A. D. 1897; that the said so-called act is now, by the said defendant, Louis C. Boyle, as attorney general of the state of Kansas, alleged to be in full force, virtue and effect as a valid law of the state of Kansas, the said so-called act providing among other things, that "it shall be the duty of the attorney general to prosecute all violations of the provisions thereof."

V.

That the said so-called act, approved March 3, 1897, and heretofore referred to as exhibit "A" is unconstitutional and void in this, to wit: that under the provisions of the constitution of the United States, and particularly under the third clause of section 8, article 1 and of article 8, and of the fifth and fourteenth amendments thereof, neither the legislature of the state of Kansas, nor the state of Kansas has power to enact or enforce the so-called act, or any of the provisions thereof so as to include or apply to the Kansas City Stock Yards Company, nor any legislative power or other authority to define the duties of the said corporation in carrying on and operating its business, or any legislative power or other authority to regulate the charges of said corporation for services rendered by it to stock shippers or other persons, or any legislative power or other authority to abridge in any manner its rights, privileges and immunities, as it is attempted to do by the so-called act, or any legislative power or other authority to prescribe any penalties whatever for the violations of the said so-called act, or of any of its provisions.

VI.

That the said so-called act, approved March 3, 1897, is unconstitutional and void as contrary to, and in conflict with, the constitution of the United States, and especially as contrary to, and in conflict with, the provisions of the fourteenth amendment thereof, in this to wit: That it denies to the Kansas City Stock Yards Company, within the jurisdiction of the state of Kansas, the equal protection of the laws in that, by its provisions, it is made to apply only to such stock yards within the state "into which live stock is received for the purpose of exposing or having the same exposed for sale, or feeding, and doing business for a compensation, and which, for the preceding twelve months shall have had an average daily receipt of not less than one

hundred head of cattle, or three hundred head of hogs or three hundred head of sheep," in that, by such provision, it singles the Kansas City Stock Yards Company out of all the other citizens and corporations within the state of Kansas, without giving to such corporation any specific or corresponding benefit therefor and restricts the application of the said so-called act to the Kansas City Stock Yards Company alone, there being no other stock yards operated in the state of Kansas, except the defendant corporation which for the preceding twelve months has "an average daily receipt of not less than one hundred head of cattle or three hundred head of hogs or three hundred head of sheep;" That, while the said so-called act in controversy does not specifically name the Kansas City Stock Yards Company, it so described it that there can be no possible doubt with regard to the attempted exclusive application of the said so-called act to said defendant corporation, and this is substantially the same as naming the said corporation in the said so-called act; that the said so-called act not only attempts to fix the charges of said corporation for driving, yarding, watering and weighing stock, but also attempts to fix the prices at which it may sell and deliver hay, corn and other grain, and therefore said corporation is not treated as other owners and operators of stock yards within the state are treated which for the preceding twelve months have a less "average daily capacity than one hundred head of cattle, or three hundred head of hogs or three hundred head of sheep;" nor is it treated as other corporations or persons are treated who are engaged in selling and trading in personal property, nor is it treated equally with such other corporations or persons; that the said so-called act is strictly class legislation, arbitrarily made and enacted to discriminate against the defendant corporation, and your orator and other stockholders of said corporation, and prevents such corporation from being treated as other stock yards corporations are treated, and as other corporations and persons are treated, engaged in similar business in the state, under like conditions and circumstances.

VII.

That the said so-called act approved March 3, 1897, is unconstitutional and void as contrary to and in conflict with the provisions of the constitution of the United States, and especially as contrary to and in conflict with the provisions of the fifth and fourteenth amendments thereof, in this, to wit: That thereby the state of Kansas is attempting to deprive the Kansas City Stock Yards Company, and your orator as a stockholder therein, of liberty and property without due process of law and without just compensation therefor; that said defendant corporation is entitled, if it can do so in the operation of

its business, to earn a fair and reasonable compensation or interest yearly on the present actual value of its property, which said present actual value thereof exceeds the sum of seven million, five hundred thousand dollars, and if the said so-called act is, or shall be applied to all the business of said corporation, and its provisions thereof shall be enforced against said defendant, its officers, agents and servants, then the legislature of the state of Kansas, and said state, have unlawfully assumed the right, and illegally attempted to exercise the right, to reduce the rates and charges of said corporation for the driving yarding, watering and weighing of cattle in this state, and also abridging, restricting and limiting said corporation in the prices at which it may sell and deliver hay, corn and other grain, so as to diminish and reduce its charges, rates, revenues and earnings in such a manner and to such an extent as to prevent it, and your orator, and the other stockholders therein, from earning, receiving or obtaining a reasonable per cent. for the money invested in said corporation, and preventing said corporation, and your orator, and the other stockholders therein, from earning, receiving or obtaining a reasonable or fair compensation, interest or dividend upon the present actual value of the property of said corporation; that the enforcement of the provisions of the said so-called act against defendant corporation will reduce the receipts of said corporation yearly to the amount of over three hundred and nine thousand ($309,000) dollars, which reduction, with the necessary and continuing costs of renewal of its yards, pens and other improvements, will leave no fair and reasonable compensation to the said corporation, nor any dividends or interest or compensation to your orator or to the other stockholders therein, and will destroy the value of the stock to your orator, and the stock of the other stockholders of said corporation, and the value of the property of said corporation, and render the same worthless, and if said so-called act is enforced against said corporation, it deprives said corporation, and all the stockholders therein, including your orator, of their property, as completely as by a special act expressly providing for its depreciation, confiscation and destruction.

VIII.

That the said so-called act approved March 3, 1897, is unconstitutional and void as contrary to, and in conflict with the provisions of the constitution of the United States, and of the state of Kansas, and especially as contrary to, and in conflict with the provisions of, article 8 of the original amendments to the constitution of the United States and in conflict with the provisions of section 9 of the bill of rights of the constitution of Kansas, in this to wit: That said so-called act permits the infliction of cruel and unusual punishments; that the last

clause of section 7 of the said so-called act provides that any person or persons violating the provisions thereof, shall be deemed guilty of misdemeanor, and upon conviction therefor, ["for each subsequent offense, he or they shall be fined in any sum not less than one thousand dollars, and by imprisonment in the county jail not less than six months;" but the maximum fine and imprisonment is not fixed, thereby permitting fines for each subsequent offense therein referred to to be of any amount exceeding one thousand dollars, and the infliction of imprisonment for any period of time exceeding six months, thereby authorizing and requiring the infliction for each subsequent offense referred to of excessive and unusual fines, and of cruel and unusual punishments, such fines and imprisonment being wholly unlimited; that said last clause of section 7 of said so-called act is also unconstitutional and void in this to wit: that it is contrary to the provisions of the constitution of the United States in that it leaves to judicial discretion without any limitation, the infliction of punishments for each subsequent offense therein referred to by excessive fines and cruel and unusual punishments.

IX.

That the said so-called act approved March 3, 1897, is unconstitutional and void as contrary to, and in conflict with, the provisions of the constitution of the United States, and especially as contrary to and in conflict with the provisions of the fifth and fourteenth amendments thereof, because it is an illegal effort to interfere with the lawful rights, powers and privileges of the defendant corporation having the right and power to seek and obtain such compensation as it properly can for the use of its own property, and the sale of proper articles, and is also an illegal effort to interfere with and abridge the lawful rights, powers, privileges and immunities, of your orator and the other stockholders of defendant corporation, who are seeking and trying to obtain, by having invested in said stock such compensation as they legally can for the use of their own money and property; and therefore said so-called act is nothing else than an effort of the legislature of the state, and of the state of Kansas, to regulate the private business of a private corporation, and of private individuals, and to limit, abridge and destroy, the compensation which the said corporation may legally exact and collect for the use of its own property, and for its stockholders; and said so-called act, and the provisions thereof, have not been and are not now exercised, and are not proposed to be exercised, by said state in any matter involving the public health, or the public morals, or of any other legitimate police power.

X.

That the said so-called act, approved March 3, 1897, and all of the various sections thereof, are unconstitutional and void as contrary to, and in conflict with the third clause of section 8, article I, of the constitution of the United States, which confers upon congress power to regulate commerce with foreign nations and among the several states, and the several acts of congress passed in pursuance thereof, in this, to wit:

That the said Kansas City Stock Yards Company, defendant, owns and operates extensive and costly stock yards as aforesaid, in the county of Wyandotte, and state of Kansas, in the vicinity of the mouth of the Kansas river, in and near to what is known as Kansas City, Kansas, and in Jackson county, in the state of Missouri, and in and near to what is known as Kansas City, Missouri; and said yards in both states have all the usual and necessary conveniences for the reception, driving, feeding and shipment of cattle and other stock; and in carrying on its business and operating its yards, it receives almost daily, not only from this state and from the state of Missouri, but also from Texas, Colorado, Nebraska and 23 other states and territories, great numbers of cattle and other stock, which are transported by the railroads to the said defendant corporation for care, feeding and shipment in this state, and Missouri, and when so transported by the railroads of the several states and territories to the yards of the defendant corporation in this state, and in the state of Missouri, they are yarded, fed, cared for, sold and shipped; that the yards in the state of Kansas and Missouri are so connected and carried on that the cattle and other stock go from one state to the other in the said yards, and are driven to and from the said yards in both states as the business of the stock raiser and shipper demands, and as the rules and regulations of the stock yards company require; that very frequently cattle so received from the states of Missouri and Kansas, and also from the other states aforesaid, are shipped from the yards of defendant to Chicago in the state of Illinois, and also to other cities and states outside of the states of Kansas and Missouri; that the said business of the said corporation is not carried on exclusively within the limits of the state of Kansas, but as aforesaid stated, also within the state of Missouri and other states; that the said yards, railroad tracks and switches and other property of the said corporation are a part of commerce itself, are necessarily connected with interstate commerce, and that the said defendant is engaged in interstate commerce, and the provisions of the said so-called act affect commerce, and amount to a regulation of it within the meaning of the constitution of the United States; and therefore the provisions of the said so-called act belong to that class

of powers which cannot be exercised by the legislature of Kansas, or by the state itself, or by any other state of the union.

XI.

That the said so-called act, approved March 3, 1897, and all of the various sections thereof are contrary to and in conflict with the provisions of an act of congress, approved May 29, 1884, entitled "An Act for the establishment of a bureau of animal industry, to prevent exportation of diseased cattle, and to provide means for the suppression and extirpation of pleuro-pneumonia and other contagious diseases among domestic animals," and of an act of congress approved August 8, 1894, making appropriation for the department of agriculture for the fiscal year ending June 30, 1895, and the regulations concerning cattle transportation, made and promulgated, in accordance with the provisions of said acts of congress aforesaid, by the secretary of the United States Department of Agriculture, at his office in Washington, District of Columbia, on January 27, 1896, in this, to wit:

That under the provisions of section 4 of said so-called act, referred to herein as exhibit "A," it is expressly provided that "there shall be but one yardage charged," and it is further provided therein that "for driving, yarding, watering and weighing of cattle, fifteen cents per head" may only be charged, demanded and collected by the defendant corporation for doing such service in the state of Kansas; that under the said regulations concerning cattle transportation, so made and published as aforesaid by the secretary of the United States Department of Agriculture, places, pens, and grounds are specially set apart by the defendant corporation, in the county of Wyandotte and state of Kansas, in the vicinity of the mouth of the Kansas river, consisting of about forty (40) acres of land, called "quarantine grounds," where cattle transported by rail to the defendant corporation, between the 15th day of February and the 15th day of November of each and every year, from the area south of or below the federal quarantine line, legally established and designated under the acts of congress aforesaid, are unloaded to be fed, watered, cared for and sold for slaughter or shipped therefrom, as provided by the said regulations of the United States Department of Agriculture; that large numbers of cattle are so transported yearly to and unloaded in said places, pens, and grounds so set apart by the defendant corporation, in accordance with said regulations concerning said cattle so transported; that such cattle must be placed in separate yards, pens and grounds, and no other cattle admitted thereto; that the same must be kept carefully cleansed and disinfected, at great cost, as provided by the regulations concerning such cattle so transported; that to water, feed and take care of cattle and other stock in the places, pens

and grounds so kept by the defendant corporation for quarantine purposes, the prices fixed in section 4 of said so-called act, referred to herein as exhibit "A," are wholly insufficient and not compensatory for the service, attention and yardage, absolutely necessary to comply with the said regulations aforesaid; and if the said defendant corporation is restricted to the maximum prices fixed in said section 4 of the said so-called act, then said cattle so transported by rail from said area south of or below said federal quarantine line, cannot be properly fed, watered, cared for and yarded by the defendant corporation in accordance with the requirements of said regulations, as aforesaid stated, and therefore, on account of the maximum charges and prices fixed in said section 4 of said so-called act, to be collected for yardage, and the prices to be charged under section 5 of said so-called act, for hay, corn and other grain, if enforced against the said corporation it might be compelled to refuse to permit said cattle to be unloaded for feed, water, care, attention, yardage, sale and shipment, as aforesaid, in its special pens, places and grounds so set apart for the reception of said cattle; and the provisions of said so-called act therefore interfere with the carrying out of the regulations aforesaid concerning said cattle transportation and the acts of congress aforesaid, and will deprive the said defendant corporation and your orator and the other stockholders of said corporation from obtaining reasonable, fair and just compensation for the yardage and feeding of said cattle so transported through the state of Kansas from the area south of and below the federal quarantine line aforesaid, and will also prevent and forbid the owners and shippers of such cattle from having sufficient, convenient and proper quarantine grounds in the county of Wyandotte, state of Kansas, where their said cattle can be fed, watered, cared for, sold or shipped, in accordance with the said regulations concerning such cattle transportation.

XII.

That by said section 8 of said so-called act, referred to herein as exhibit "A" it is made the duty of the said Louis C. Boyle, as attorney general of the state of Kansas, to prosecute all of the violations of the provisions of said act; that your orator fears that the said attorney general may cause the defendant corporation and any and all of its officers and agents, who shall violate any of its provisions, to be arrested and prosecuted; that he will attempt to enforce said so-called act through the courts of Wyandotte county, Kansas, and through the courts of the state of Kansas, by a multiplicity of criminal actions or proceedings against each and every person failing or refusing to comply with the provisions thereof, including the said defendant corporation and its officers and agents, thereby greatly harassing and annoy-

ing the said defendant corporation and its officers and agents and causing them great expense and consuming valuable time, unless the said defendant corporation, its officers and agents, shall put in force at once the said charges and prices specified in said sections 4 and 5 of said so-called act, and shall obey and carry out all of the terms and provisions of said act and each section thereof. And your orator fears that the said Louis C. Boyle, as attorney general, will proceed at once to carry into force said arrests and prosecutions unless immediately restrained by the order and injunction of this honorable court.

XIII.

That heretofore, to wit, on the 12th day of March A. D. 1897, the Kansas City Stock Yards Company, and also Charles F. Morse, a director, vice-president and general manager of said corporation, and also at present the acting president of said corporation, and being the only managing director hereof, on account of the passage of said so-called act by the legislature of the state of Kansas, and the heavy penalties therein provided, and the fear that said Louis C. Boyle, as attorney general aforesaid, will at once proceed to arrest and prosecute said corporation and its officers and employees and to save the defendant corporation, its officers, agents, servants and employees from being so arrested, harassed and annoyed by the said Louis C. Boyle, as attorney general, in attempting to enforce the provisions of said so-called act notwithstanding the invalidity of said act, informed your orator, as such stockholder as aforesaid, that the provisions of the said so-called act would be applied by the defendant corporation, its officers and agents, to the operation of its yards in the state of Kansas, and that all the provisions therein obtained concerning charges for yardage or otherwise, and all the prices for the sale and delivery of hay, corn, and other grain, therein fixed, would be observed and carried out in the state of Kansas; and that said so-called act and all the terms thereof would be observed and obeyed by the said defendant corporation, its officers and agents; and also informed your orator that on the 13th day of March, 1897, the prices fixed in said section 4 of said so-called act would be at once ordered and put in force in the operation of the yards and property of said defendant corporation in the state of Kansas, and that no greater prices would be demanded, exacted or collected for driving, yarding, watering and weighing cattle and other stock than as therein specified; and also, that said defendant corporation, its officers and agents would sell and deliver in the state of Kansas, at the prices fixed in said section 5 of said so-called act, hay, corn and other grain at the prices, terms and weight specified in said section 5 of the said so-called act; and also would in all other ways comply with the provisions of the said act, because of the heavy fines and

penalties therein provided and because of the fear of arrests and prosecutions as hereinbefore alleged, notwithstanding the invalidity of such acts.

XIV.

That heretofore, on the 12th day of March, 1897, your orator, as a stockholder of said defendant corporation and as interested in the economical and successful management of the business of said corporation, and who was then and there a stockholder and shareholder at the time of the transactions complained of, desiring to secure, on the part of the managing director of said defendant corporation, a revocation of said order and directions of said defendant corporation, and of its said acting president and sole managing director, to put in force the provisions of said act aforesaid, did serve a notice in writing upon said defendant corporation and Charles F. Morse, as the acting president and managing director of said corporation, demanding that said orders and directions aforesaid to put in force the said so-called act and all of its provisions in the operation of the stock yards and property of said defendant corporation be revoked and set aside upon the ground that the said so-called act is unconstitutional and void, and also demanding that the said defendant corporation and the said managing director aforesaid should continue to exact, receive and collect the rates and prices now existing in the operation of the business of the said defendant corporation for driving, yarding, watering and weighing stock, and also in selling and delivering hay, corn and other grain, so that its property would yield some compensation for services performed, sales made, and the business carried on.

And your orator alleges that said defendant corporation and the said Charles F. Morse, acting president and sole managing director as aforesaid, have each refused to comply with the request of your orator, and wholly disregard the same. And your orator hoped that the said defendant corporation and the said Charles F. Morse, as its acting president and as its sole managing director, and the other officers and agents of said corporation, would have complied with the reasonable request of your orator, as in justice and equity the said defendant corporation and its officers and agents should have done; but now, so it is, that the said defendant corporation and the said Charles F. Morse, as such acting president and as such sole managing director, and the other officers and agents of said defendant corporation, under his control and direction, to the great wrong and injury of your orator in the premises, absolutely refuse to comply with such reasonable and proper request.

And your orator further says that the cause of the failure of your orator to obtain a revocation of said order and directions of the said

defendant corporation and of the said Charles F. Morse, as a director, vice president and general manager and as the acting president of said corporation and as the sole managing director thereof, is as herein stated, that the said defendant corporation and the said Charles F. Morse, as such officer aforesaid, notwithstanding the invalidity of the so-called act of the legislature of the state of Kansas, referred to as exhibit "A", are in fear of the annoyance, harassment, humiliation, and expense to which the said defendant corporation and the said Morse and the other officers, agents, servants and employes of said corporation will be immediately subjected under the so-called act herein referred to, and especially so if its provisions are attempted to be enforced by Louis C. Boyle, as attorney general, as is now proposed and threatened by him, as aforesaid stated, or any other officer of the state of Kansas; and therefore the said defendant and the said Charles F. Morse, as officer of said corporation, absolutely refuse to secure to your orator such action, or any action, as he has demanded and desires on the part of and from the said corporation and of and from the managing directors thereof.

And your orator further says that this suit is not a collusive one with the defendants or any other person or party, to confer on the above entitled court of the United States jurisdiction of a case which it would not otherwise have cognizance of, but your orator alleges that such suit is brought in good faith, for the protection of his own interests in the defendant corporation, and to prevent his said stock and his property therein from being depreciated, lost and destroyed, in violation of law and the provisions of the constitution of the United States as aforesaid.

XV.

And your orator says that as before stated, the enforcement of the provisions of said so-called act against the defendant corporation, and its officers and agents, and the observance of the provisions of said so-called act, fixing a maximum charge to be made by said defendant corporation for services rendered, accommodations furnished, and hay, corn and other grain sold by the said defendant corporation, as is now proposed and threatened to be done by them, will deprive the defendant corporation of the power of exacting reasonable and fair compensatory rates for yardage and other services rendered, and for hay, corn and other grain sold in its yards, and will deprive it of the use of its property and, in effect, of the property itself, without the due process of law; and if the said defendant corporation and its officers and agents are allowed to put in force the maximum rates and prices aforesaid, specified in said so-called act, your orator and the other stockholders of said defendant corporation will be unable to secure a reasonable

per cent. on their money invested in said corporation, and in the stock and property thereof, and will be unable from the earnings of said defendant corporation, to obtain any reasonable and fair compensation, dividend or interest, on the actual value of their said stock, as the said defendant corporation cannot, under such maximum rates, charges and prices, earn any reasonable or fair compensation, interest or dividend on the present actual value of its property.

And your orator says that he has the right to demand of the said defendant corporation and of the said Charles F. Morse, as acting president and sole managing director thereof, that the business of said corporation shall be carefully, properly, economically and successfully managed, as heretofore it has been done, and that such reasonable rates and compensation shall be exacted, demanded and collected for services rendered, accommodations furnished, and for the hay, corn and other grain sold by said defendant corporation, so that the said corporation may earn reasonable and fair compensation, interest or dividends, on the present actual value of its property, and if said corporation continues in force its present existing rates, charges and prices, it can and will earn reasonable and fair compensation, interest and dividends on the present actual value of its property, which can be properly divided among the stockholders of said corporation, including your orator.

And your orator further says he fears that if such destructive maximum rates, charges and prices are put in force, as aforesaid, your orator and the other stockholders of said defendant corporation will suffer great and irreparable injury, for which damages at law would be no adequate remedy; and said defendant corporation, and the officers and agents thereof, will carry out their said orders and directions aforesaid, unless restrained at once by the order and injunction of this honorable court.

In Consideration Whereof, and forasmuch as your orator is remediless in the premises at and by the strict rules of the common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable, therefore your orator prays the decree of this honorable court, adjudging that it is the duty of the said defendant corporation and the said Charles F. Morse, acting president, general manager and sole managing director of said defendant corporation, for the benefit of said corporation and of your orator and the other stockholders of said corporation, to revoke at once the orders and directions to put into force the provisions of said so-called act, referred to herein as exhibit "A" and the maximum charges and prices therein specified, and that it is the duty of said defendant corporation and the said Charles F. Morse, acting president, general manager and

sole managing director, for the pecuniary benefit of your orator and the other stockholders of said defendant corporation, to maintain and operate the stock yards of said defendant corporation herein named in the same manner as they have been heretofore economically and successfully operated, and to charge for the services to be furnished, for yardage and other matters, the present existing charges (which are fair, reasonable and just) and also to sell and deliver hay, corn and other grain to stock raisers, shippers and other persons, upon the same terms and for the same prices and in the same way such articles are now sold by said defendant corporation (which said prices under all the circumstances and conditions, are fair, reasonable and just;) and that said defendant corporation, and each of its said officers and agents named as defendants herein, shall be enjoined from obeying, observing or putting into force any of the provisions of said so-called act; and that said order and injunction issue against said defendant corporation and the said Charles F Morse, as acting president and sole managing director thereof, and each of the other officers and agents of said defendant corporation, made parties defendant herein, commanding them and each of them to refrain from putting into force the provisions of the said so-called act or any part thereof.

That the said Louis C. Boyle, as attorney general, be adjudged and decreed from attempting, as against said defendant corporation or any of its officers, agents, servants, or employes, to enforce the provisions of the said so-called act or any part thereof. And also, that said order and injunction issue against the said Louis C. Boyle, as attorney general, commanding him to refrain from harassing and annoying, by prosecution or otherwise, under the provisions of the said so-called act, the defendant corporation, the said Charles F. Morse, or any of the other officers, servants, agents or employes of the said defendant corporation herein named.

That the final mandatory order and injunction of this court in this case issue, compelling said defendant corporation and the said Charles F. Morse and each of the other officers and agents of said defendant corporation herein named, to operate and maintain the said stock yards of the said defendant corporation in the state of Kansas as they are now operated and maintained, and that they exact and collect the same charges for services performed and the same prices now demanded and received, wholly disregarding the said so-called act and all of the provisions thereof.

That a final order, judgment and decree issue that the said so-called act, approved March 3, 1897, herein referred to as exhibit "A" and made a part of this bill of complaint, is unconstitutional and void and of no validity, force or effect whatever; and that all of said de-

fendants and each of them be enjoined from enforcing or attempting to enforce the said so-called act or any of the provisions thereof.

That a preliminary injunction may issue at once, upon the filing of this bill of complaint, against the said defendant corporation and each of its officers and agents named as defendants herein, during the pendency of this suit, strictly commanding and enjoining the said defendants and each of them, under the pains and penalties which may fall upon them and each of them in case of disobedience, that they forthwith, and until the further order, judgment and decree of this court, desist from putting into force the said maximum rates, charges and prices specified in said so-called act aforesaid; and against the said Louis C. Boyle, as attorney general, commanding and enjoining him to desist from enforcing or attempting to enforce the said so-called act against said defendant corporation and its officers and agents named as defendants herein, by arrest or otherwise, through the courts of the state or otherwise.

For in as much as your orator is without relief in a court of law, may it please this honorable court to grant unto your orator a writ of subpœna, to be directed to the Kansas City Stock Yards Company a corporation, Charles F. Morse, as director, general manager, acting president and sole managing director of the said Kansas City Stock Yards Company; Harry P. Child, as the assistant general manager of the said corporation; Eugene Rust, as the general superintendent of the said corporation; Elliott E. Richardson, as the secretary of the said corporation; and Louis C. Boyle as attorney general of the state of Kansas, commanding them and each of them, at a certain date and under the pain and penalty therein mentioned, personally to be and appear before this honorable court, then and there full and true, direct and perfect answer to make to all and singular the premises (but not under oath, answer under oath being hereby expressly waived); and further to stand to, and abide by such further order and direction herein as to this honorable court may seem just; and for such further and other order and direction herein as in equity and good conscience your orator may be entitled to, though not specifically prayed herein.

And your orator will ever pray.

CHARLES U. COTTING,
By C. J. Hubbard, Authorized Agent.

WAGGENER, HORTON & ORR,
Solicitors for the Complainant.

ALBERT H. HORTON,
Of Counsel.

United States of America,
First Division of District of Kansas. } ss.

On this 13th day of March, A. D. 1897, before me, personally appeared C. J. Hubbard, of Kansas City, Missouri, being of lawful age, who made solemn oath that he was the duly authorized agent of the said Charles U. Cotting, the above named complainant, to file the foregoing bill in the United States Circuit Court in and for the District of Kansas, and in the First Division thereof, and to employ solicitors and counsel for the said Charles U. Cotting, complainant for that purpose, and to attend for said Charles U. Cotting, complainant to the prosecution of said suit and the proceedings thereof; that the said Charles U. Cotting, complainant, does not reside in and is not now within the district of Kansas or the district of Missouri, or within any of the judicial districts composing the Eighth Circuit of the United States; and he further made solemn oath that he had read the foregoing bill of complaint subscribed by the complainant through the affiant as his authorized agent therefor, and knows the contents thereof; and that he is personally acquainted with the matters and things alleged in said foregoing bill of complainant, and that the same are true of his own personal knowledge; that at the instance of, and under the direction of the said Charles U. Cotting, complainant, he personally made and served in the name of the said Charles U. Cotting, complainant, and for him and as his duly authorized agent therefor, the written requests and efforts alleged in said bill of complaint of the said Charles U. Cotting, complainant, to secure the action therein stated, as said complainant desired on the part of the managing directors of the Kansas City Stock Yard Company, and also upon said company, and is personally acquainted as the authorized agent of said Charles U. Cotting, complaint, with the said particular efforts of the said Charles U. Cotting, complainant, to secure the said action as aforesaid, and of the failure of the said Charles U. Cotting, complainant, to obtain such action on the part of and from the said managing directors of the said defendant corporation and on the part of and from the said defendant corporation itself; and also personally knows of the cause of the failure of said Charles U. Cotting, complainant, to obtain such action as is fully alleged in the said bill of complaint.

That this suit is not a collusive one on the part of the complainant or on the part of this affiant, his duly authorized agent, to confer on the United States Circuit Court for the District of Kansas, or on any court of the United States, jurisdiction of a case of which it would not otherwise have cognizance.

And further this affiant saith not. C. J. HUBBARD.

Subscribed and sworn to before me, this 13th day of March, A. D. 1897. GEO. F. SHARITT, Clerk.

[SEAL.]

EXHIBIT "A."

Committee Substitute for House Bill No. 87.

AN ACT

Defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating all charges thereof, and removing restrictions in the trade of dead animals and prescribing penalties for violations of this act.

Be it enacted by the Legislature of the State of Kansas:

SECTION 1. Any stock yards within this state, into which live stock is received for the purpose of exposing or having the same exposed for sale or feeding, and doing business for a compensation, and which for the preceding twelve months shall have had an average daily receipt of not less than one hundred head of cattle, or three hundred head of hogs, or three hundred head of sheep, are hereby declared to be public stock yards.

SEC. 2. Any person, company or corporation owning or operating any such public stock yard or stock yards in this state is hereby declared to be a public stock yards operator, whether living or being within this state or not.

SEC. 3. Every such public stock yards operator or operators shall annually on the 31st day of December of each year, file with the secretary of state, an itemized statement certified and sworn to, setting forth the number of head of cattle, calves, sheep, hogs, horses and mules received in his or their public stock yards during the year next preceding.

SEC. 4. It shall be unlawful for the owners, proprietors, or the employes of the owners or proprietors of any such public stock yards within this state, to charge for driving, yarding, watering, and weighing of stock, greater prices than the following: For driving, yarding, watering and weighing of cattle, 15 cents per head; calves 8 cents per head; hogs 6 cents per head; sheep 4 cents per head; and there shall be but one yardage charged.

SEC. 5. It shall be unlawful for the owner, owners or proprietors, or their employes, or any such stock yards within this state, to sell and deliver at the rate of less than two thousand pounds for a ton of hay, or any part thereof, the same to be of good quality, or to charge for or to sell the same at more than one hundred per cent. above the average market price, or value of such hay upon the markets of the towns or cities wherein such stock yards are located, upon the day preceding such sale and delivery; and it shall also be unlawful fo any such owners, or proprietors, or employes, to sell and deliver less than seventy pounds of corn in the ear for a bushel, or less than fifty-six pounds of shelled corn for a bushel or to charge for or to sell the

same at more than one hundred per cent. above the average market price or value of such ear corn or shelled corn on the markets of the towns or cities wherein said stock yards are located, on the day next preceding such sale and delivery. All feed not above named shall be sold for no greater per cent. of profit than hereinbefore provided.

SEC. 6. It shall be unlawful for the owners or proprietors of any stock yards to prohibit the owner or owners, or the representatives of any owner or owner of any dead stock in such yard or yards from selling such dead stock to any person or persons.

SEC. 7. That any person or persons violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined for the first offense not more than one hundred dollars, for the second offense not less than one hundred dollars nor more than two hundred dollars; and for the third offense not less than two hundred dollars nor more than five hundred dollars and by imprisonment in the county jail not exceeding six months for each offense; and for each subsequent offense he or they shall be fined in any sum not less than one thousand dollars and by imprisonment in the county jail not less than six months.

SEC. 8. It is hereby made the duty of the attorney general to prosecute all violations of the provisions of this act.

SEC. 9. All acts or parts of acts in conflict with this act are hereby repealed.

SEC. 10. This act shall take effect and be in force from and after its publication in the official state paper.

I hereby certify that the above bill originated in the house, and passed that body March 1, 1897.

W. D. STREET, Speaker of the House.
A. D. GILPIN, Chief Clerk of the House.

Passed the Senate March 2, 1897.

A. M. HARVEY, President of the Senate.
M. WATSON, Secretary of the Senate.

Approved March 3, 1897.

J. W. LEEDY, Governor.

State of Kansas, }
Office of Secretary of State. }

I, W. E. Bush, secretary of state of the state of Kansas, do hereby certify that the above and foregoing is a correct copy of the original enrolled bill now on file in my office.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal, this 8 day of March, 1897.

[SEAL.]

W. E. BUSH, Secretary of State.
By C. M. ROSS, Assistant Secretary of State.

ENDORSED: No. 7427. Charles U. Cotting vs. Kansas City Stock Yards Company, *et al.* Bill of complaint. Filed Mch. 13, 1897. GEO. F. SHARITT, Clerk.

United States of America, district of Kansas, ss.

In the circuit court of the United States for the district of Kansas, first division.

CHARLES U. COTTING, *Complainant*,

vs.

KANSAS CITY STOCK YARDS COMPANY, a corporation, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON, and LOUIS C. BOYLE, as attorney general of the state of Kansas, *Defendants.*

No. 7427. In equity.

Whereas, Charles U. Cotting has presented his bill of complaint and affidavit in the above entitled suit, wherein, among other things, he prays that the Kansas City Stock Yards Company, Charles F. Morse, as the general manager, acting president and sole managing director of said corporation, Harry P. Child, as assistant general manager of said corporation, Eugene Rust, as general superintendent of said corporation, and Elliott E. Richardson, as secretary of said corporation, be commanded, enjoined and restrained from obeying and observing a so-called act of the legislature of the state of Kansas, approved March 3d, 1897, and known as "Committee Substitute for House Bill No. 87," and entitled "An Act defining what shall constitute public stock yards, defining the duty of the person or persons operating the same, and regulating the charges thereof and removing restrictions in the trade of dead animals by prescribing penalties for the violation of this act;" and from putting into force in the business of said defendant corporation the maximum rates, charges and prices specified in the so-called act aforesaid; and wherein, among other things, he prays that the said defendant Louis C. Boyle, as attorney general of the state of Kansas, be enjoined and restrained from enforcing or attempting to enforce the said so-called act or any of the provisions thereof, against the said defendant corporation, its officers, agents, servants and employes by arrest, criminal prosecution or otherwise, as more particularly shown in the bill of complaint herein; and that a final injunction issue commanding said defendant corporation and its officers and agents named as defendants herein to operate and maintain the said defendant corporation and the business thereof, as in said bill of complaint prayed.

NOW THEREFORE, IT IS ORDERED: That the said defendants and each of them show cause before this Court at the City of Topeka, on the 25th day of March, A. D. 1897, at two o'clock P. M. of said day,

or as soon thereafter as counsel can be heard, why the prayer of said bill of complaint for a preliminary injunction as therein prayed for should not be granted, and why the said defendants and each of them, their officers, assistants, agents, servants and employes should not be enjoined and restrained during the pendency of this suit, from obeying, observing and enforcing the provisions of the so-called act of the legislature of the State of Kansas herein referred to; and why the said complainant should not have the relief prayed for in said bill of complaint; that pending the hearing of this matter, the said defendant corporation and Charles F. Morse, as general manager, acting president and sole managing director of said defendant corporation, and the other officers and agents of said corporation named as defendants herein be and they are hereby ordered and restrained to desist and refrain from obeying, observing or putting into force in the operation of the said defendant corporation's business the maximum rates, charges and prices specified in said so-called act aforesaid; and the said Louis C. Boyle, as attorney general of the State of Kansas, is hereby ordered and restrained to desist and refrain from enforcing the provisions of said so-called act against the said defendant corporation, its officers, agents, servants and employes, and from arresting or criminally prosecuting in the courts of the state or otherwise the said defendant corporation, its officers, agents, servants and employes on account of any non-observance or disobedience of the said so-called act or any of its provisions or on account of the failure to fully comply with the terms thereof.

Let a copy of this order, together with a copy of the bill of complaint herein, duly sworn to, be served upon the defendants eight days before the hearing of said matter.

CASSIUS G. FOSTER, Judge.

Endorsed: Filed Mch. 13, 1897. GEO. F. SHARP, Clerk.

Received the within writ at Kansas City, Missouri, on the 16th day of March, 1897, and executed the same by delivering certified copies to the following named defendants mentioned therein, viz:

One copy to Chas. F. Morse, as acting president and general manager of the Kansas City Stock Yards Company.

One copy to Chas. F. Morse, as acting president and general manager, and sole managing director of the said company.

One copy to Harry P. Child, as assistant general manager of said company.

One copy to Eugene Rust, as general superintendent of said company.

One copy to Elliot E. Richardson, as secretary of said company.

All done at Kansas City, in the western district of Missouri, this 16th day of March 1897.

G. Y. GRENSHAW, U. S. Marshal.
By C. MADSON, Office Deputy.

Fees	$10 00
Expenses	1 85
Total	$11 85

Endorsed: Filed March 20, 1897.
GEO. F. SHARITT, Clerk.

United States of America, district of Kansas, ss.

In the circuit court of the United States for the district of Kansas, first division.

FRANCIS LEE HIGGINSON, *Complainant,*

against

KANSAS CITY STOCK YARDS COMPANY, a corporation, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON, and LOUIS C. BOYLE, as attorney general of the state of Kansas, *Defendants.*

No. 7453. In equity.

To the honorable judges of the circuit court of the United States for the district of Kansas, first division:

Francis Lee Higginson, a resident and citizen of the State of Massachusetts, and a stockholder of the Kansas City Stock Yards Company, on his own behalf, and on behalf of other stockholders of the Kansas City Stock Yards Company, having like interest herein and similarly situated, who may hereafter join in the prosecution of the suit and become parties herein, and contribute to the expenses hereof, brings this, his bill in equity against the Kansas City Stock Yards Company, a corporation duly created, organized and existing under the laws of the State of Kansas, and a resident and citizen of the State of Kansas, and of the First Division of the said District, having its principal office and place of business in this state, at the city of Kansas City, in this state; Charles F. Morse, a director, vice-president and general manager of the Kansas City Stock Yards Company, and also the managing director of said corporation, and also, at the present time, in consequence of the absence of the president of said corporation in Europe, the acting president thereof, and a resident and citizen of the state of Missouri; Harry P. Child, the assistant general manager of the Kansas City Stock Yards Company, and a resident and citizen

of the state of Missouri; Eugene Rust, the general superintendent of the Kansas City Stock Yards Company, and a resident and citizen of the state of Missouri; Elliott E. Richardson, the secretary of said Kansas City Stock Yards Company, and a resident and citizen of the state of Kansas, and of the first division of said district; and Louis C. Boyle, as attorney general of the state of Kansas, being the duly elected, qualified and acting attorney general of the said state of Kansas, and a resident and citizen thereof, and an inhabitant of the first division of said district; and thereupon your orator complains and alleges:

I.

That your orator, Francis Lee Higginson, is a resident and citizen of the state of Massachusetts, and is a stockholder in the Kansas City Stock Yards Company, being the owner and in possession of 296 shares of the capital stock of said corporation, 200 shares of which have been owned and held by him for more than seven years last past, and which said shares of stock so held, owned and possessed by him, are of the full value of more than five thousand ($5,000) dollars, to wit, of the value of thirty-seven thousand ($37,000) dollars; that your orator invested in, and became the owner of said stock in the said corporation for a valuable consideration to earn and obtain thereon a reasonable and a fair dividend or rate of interest on the actual value thereof; that since your orator became the owner and holder of said stock, up to this time, the said corporation has been so economically and successfully operated and managed, as to produce some profit to your orator, and to the other stockholders of said corporation, who have invested their money in said corporation and in the stock thereof; that your orator is entitled to demand and require that the said corporation shall continue to carry on its business in the future, as in the past, so that the said corporation, if possible shall earn a reasonable and fair dividend or interest on the present actual value of its property, so that your orator as a stockholder therein shall receive some compensation for the use of his money and property invested in said corporation, and in the stock thereof, without prejudice to the rights of others, and for this purpose, and to this end, your orator is entitled to demand of the said Kansas City Stock Yards Company, and the officers and agents thereof, that the said company shall prescribe, exact and collect such just and reasonable rates, charges and compensation from persons doing business with it, or making purchases of hay, corn or other property therefrom, as that the said corporation shall earn a fair and reasonable compensation or interest on the present actual value of its property, if it be possible so to do, in the lawful transaction of its

business. That the amount involved in this suit and the matter in dispute exceeds, exclusive of interest and costs, the sum and value of two thousand dollars and the damages and losses which will accrue to your complainant if the so-called act hereinafter referred to shall be enforced in any respect will largely exceed, exclusive of interest and costs, the sum and value of two thousand dollars.

II.

That the Kansas City Stock Yards Company, defendant, is and for more than twenty years last past has been a corporation duly created, organized and existing under the laws of the state of Kansas, and a citizen and resident thereof, and of the first division of said district, with power to construct, maintain and operate stock yards in this state and in the state of Missouri, and to own real estate for that purpose, with authority also to erect and maintain buildings, hotels, railways, switches, yards, pens, and such other improvements as may be necessary for its purposes, and also with authority for receiving, shipping, yarding, feeding and otherwise caring for horses, mules, cattle and other stock at its yards in Kansas City, Kansas, and in Kansas City, Missouri, with the right of demanding, exacting, and collecting for its services performed, and for its property sold to others, fair compensation, and also such prices therefor as might be agreed upon by the parties interested; that the yards occupied by it in carrying on its business consist of about one hundred and sixty acres, about one hundred and twenty acres of which are situated in this state, and about forty acres thereof in the state of Missouri; that about sixty-five per cent. of the earnings of said corporation are derived from its business carried on in this state, and that about thirty-five per cent. thereof is derived from its business carried on in the state of Missouri; that, for a very large part of this real estate, the said corporation was compelled to pay large prices therefor, because it was absolutely necessary for its use to successfully carry on its business, and because the same was at the time of purchase occupied by a good class of buildings, which it was necessary to remove, and the land so formerly occupied by such buildings is now being used entirely for stock yards purposes; that the improvements at the stock yards consisting of buildings, railroad tracks, switches, viaducts, pens and other improvements are very extensive and maintained in a superior condition, the cattle pens alone covering about eighty acres, all of them either floored with plank, or paved with vitrified brick; that the corporation has hog sheds with a daily capacity of thirty thousand hogs, and sheep sheds with a daily capacity of twenty thousand sheep, and also stables for about four thousand horses and mules; that during the past five years the capacity of the yards of the corporation has

been, to meet the growing demands of business, almost doubled, at a large expenditure of money; that the authorized capital stock of said corporation is seven million, five hundred thousand ($7,500,000) dollars, of which $7,368,650 on December 31, 1896, had been issued; that the present actual value of the property of said corporation, so employed for its stock yards, as aforesaid, is in excess of the value of seven million five hundred thousand ($7,500,000) dollars. That for the year 1896, the total receipts of stock at said stock yards were as follows, to wit:

1,714,532 cattle,
100,166 calves,
993,126 sheep,
2,605,575 hogs,
57,847 horses and mules,

making a total of all stock handled by said yards of 5,471,446; that the gross earnings of the corporation for the year 1896 were one million, twenty-three thousand eight hundred and seventy and $\frac{20}{100}$ dollars, ($1,023,870.20); that the total expenditures were five hundred and forty-nine thousand, three hundred and fifty-one and $\frac{80}{100}$ ($549,351.80) dollars, all of which were necessary for the operation and maintenance of the property, leaving net earnings of four hundred and seventy-four thousand five hundred and eighteen and $\frac{40}{100}$ ($474,518.40) dollars, about six per centum on the capital stock of the corporation for that year; that the yards, pens, and most of the improvements of said stock yards have to be necessarily replaced or renewed every five to seven years, costing large sums of money therefor, and consuming a large amount of the yearly earnings of the said corporation; that the charges now prescribed, exacted and collected by the corporation, and which have existed for several years, are as follows, to wit:

For driving, yarding, watering and weighing cattle, twenty-five cents per head; calves ten cents per head, hogs eight cents per head, and sheep five cents per head; that such charges and prices are fair, reasonable and just, considering all conditions and the services rendered therefor, and only furnish reasonable compensation to the said defendant corporation; that all existing charges and prices of the corporation for hay, corn, and other grain sold or delivered by it, under the conditions and circumstances in which the same are sold and delivered and fed, and the care and attention given by the corporation to cattle and other stock in its yards, in connection with the sale, delivery and feeding of hay, corn and other grain, are fair, just and reasonable, and the operation of the stock yards under such rates, charges and prices, and the collection thereof, only permit the corporation to earn a fair and reasonable compensation or interest on the present actual

value of its property, so necessarily occupied and used by it for stock yards business, and such earnings are about six per centum per annum on the money invested in said corporation, after paying the operating expenses thereof, taxes, and the expenses of the necessary repairs, renewals and the maintenance of the same; that the charges for yardage and feed at the stock yards of the said corporation are the same as those of other stock yards similarly conducted, and the same as the stock yards at St. Louis, Missouri, East St. Louis and Chicago, Illinois, and Omaha, Nebraska; that said defendant corporation makes no charges whatever on any stock that is not sold in the yards when received from railroad companies, and said stock is subject to the order of the owner, and is delivered to the railroads or buyers without charge to the owner; that said stock yards so owned and operated by said corporation have been and are of great pecuniary value and benefit to the stock raisers and shippers of Kansas, Missouri and adjacent states; that the location and operation of the stock yards of said corporation in this state and in Kansas City, Missouri, have induced large packing establishments to locate in Kansas City, Kansas, for the purpose of buying, killing and packing cattle and other stock, thereby furnishing an excellent and convenient market to the stock raisers and shippers of Kansas, Missouri and adjacent states; that fat cattle, sold in Kansas City in 1896, netted an average of nine and three-fourths cents per hundred pounds more than the same stock sold in Chicago the same day, and that hogs netted nine cents more, and sheep seventeen cents more, and that the importance of the stock market at Kansas City to the producers, stock raisers and shippers of Kansas has been greatly increased by the successful operation of the large and extensive stock yards of said corporation at and near Kansas City, Kansas, and at and near Kansas City, Missouri.

III.

That Charles F. Morse, defendant, is a director, vice-president and general manager of the Kansas City Stock Yards Company, and the only managing director thereof, and, at the present time, in consequence of the absence of the president of said corporation in Europe, is also the acting president thereof, and has full authority to fix the rates and prices to be charged by said Stock Yards Company and is a resident and citizen of the state of Missouri; that Harry P. Child is the assistant general manager of said corporation and a citizen and resident of the state of Missouri; that Eugene Rust, defendant, is the general superintendent of said corporation, and a resident and citizen of the state of Missouri; that Elliott E. Richardson is the secretary of said corporation and a resident and citizen of the state of Kansas, and of the first division of said district; and that Louis C.

Boyle, as Attorney General of the state of Kansas is a citizen and resident of the state of Kansas, and an inhabitant of the first division of said district, and the duly elected, qualified and acting Attorney General of said state.

IV.

That on the third day of March, 1897, Honorable John W. Leedy, as Governor of the State of Kansas, approved a certain so-called act "House Bill No. 87" and entitled "An Act defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating the charges thereof, and removing restrictions in the trade of dead animals, and prescribing penalties for the violations of this act"; that in the said so-called act, it was provided the same should take effect and be in force from and after its publication in the official state paper of the state of Kansas; that a certified copy of the said so-called act is hereto attached, marked exhibit "A" and made a part of this bill of complaint, to which reference is hereby made as if fully incorporated herein; that the said so-called act was published in the official state paper of the state on the 12th day of March A. D. 1897; that the said so-called act is now, by the said defendant, Louis C. Boyle, as Attorney General of the State of Kansas, alleged to be in full force, virtue and effect as a valid law of the state of Kansas, the said so-called act providing among other things, that "It shall be the duty of the Attorney General to prosecute all violations of the provisions thereof".

V.

That the said so-called act, approved March 3d, 1897, and heretofore referred to as exhibit "A," is unconstitutional and void in this, to wit: that under the provisions of the constitution of the United States, and particularly under the third clause of section 8, article 1, and of article 8, and of the fifth and the fourteenth amendments thereof, neither the legislature of the state of Kansas, nor the state of Kansas has power to enact or enforce the so-called act, or any of the provisions thereof so as to include or apply to the Kansas City Stock Yards Company, nor any legislative power or other authority to define the duties of the said corporation in carrying on and operating its business, or any legislative power or other authority to regulate the charges of said corporation for services rendered by it to stock shippers or other persons, or any legislative power or other authority to abridge in any manner its rights, privileges and immunities, as it is attempted to do by the said so-called act, or any legislative power or other authority to prescribe any penalties whatever for the violations of the said so-called act, or any of its provisions.

VI.

That the said so-called act, approved March 3d, 1897, is unconstitutional and void as contrary to, and in conflict with, the constitution of the United States, and especially as contrary to, and in conflict with, the provisions of the fourteenth amendment thereof, in this, to wit: That it denies to the Kansas City Stock Yards Company, within the jurisdiction of the state of Kansas, the equal protection of the laws in that, by its provisions, it is made to apply only to such stock yards within the state "into which live stock is received for the purpose of exposing or having the same exposed for sale, or feeding, and doing business for a compensation, and which, for the preceding twelve months, shall have had an average daily receipt of not less than one hundred head of cattle, or three hundred head of hogs or three hundred head of sheep," in that, by such provision, it singles the Kansas City Stock Yards Company out of all the other citizens and corporations within the state of Kansas, without giving to such corporation any specific or corresponding benefit therefor and restricts the application of the said so-called act to the Kansas City Stock Yards Company alone, there being no other stock yards operated in the state of Kansas, except the defendant corporation which for the preceding twelve months has "an average daily receipt of not less than one hundred head of cattle or three hundred head of hogs or three hundred head of sheep"; that, while the said so-called act in controversy does not specifically name the Kansas City Stock Yards Company, it so describes it that there can be no possible doubt with regard to the attempted exclusive application of the said so-called act to said defendant corporation, and this is substantially the same as naming the said corporation in the said so-called act; that the said so-called act not only attempts to fix the charges of said corporation for driving, yarding, watering and weighing stock, but also attempts to fix the prices at which it may sell and deliver hay, corn and other grain, and therefore said corporation is not treated as other owners and operators of stock-yards within the state are treated which for the preceding twelve months have a less "average daily capacity than one hundred head of cattle, or three hundred head of hogs or three hundred head of sheep"; nor is it treated as other corporations or persons are treated who are engaged in selling and trading in personal property, nor is it treated equally with such other corporations or persons; that the said so-called act is strictly class legislation, arbitrarily made and enacted to discriminate against the defendant corporation, and your orator and other stockholders of said corporation, and prevents such corporation from being treated as other stock yards corporations are treated, and as other corporations and persons are treated, engaged in similar business in the state, under like conditions and circumstances.

VII.

That the said so-called act approved March 3d, 1897, is unconstitutional and void as contrary to and in conflict with the provisions of the constitution of the United States, and especially as contrary to and in conflict with the provisions of the fifth and fourteenth amendments thereof, in this, to wit: That thereby the state of Kansas is attempting to deprive the Kansas City Stock Yards Company, and your orator as a stockholder therein, of liberty and property without due process of law and without just compensation therefor; that said defendant corporation is entitled, if it can do so in the operation of its business, to earn a fair and reasonable compensation or interest yearly on the present actual value of its property, which said present actual value thereof exceeds the sum of seven million, five hundred thousand dollars, and if the said so-called act is, or shall be applied to all the business of said corporation, and its provisions thereof shall be enforced against said defendant, its officers, agents and servants, then the legislature of the state of Kansas, and said state, have unlawfully assumed the right, and illegally attempt to exercise the right, to reduce the rates and charges of said corporation for the driving, yarding, watering and weighing of cattle in this state, and also abridging, restricting and limiting said corporation in the prices at which it may sell and deliver hay, corn and other grain, so as to diminish and reduce its charges, rates, revenues and earnings in such a manner and to such an extent as to prevent it, and your orator, and the other stockholders therein, from earning, receiving or obtaining a reasonable per cent. for the money invested in said corporation, and preventing said corporation, and your orator, and the other stockholders therein, from earning, receiving or obtaining a reasonable or fair compensation, interest or dividend upon the present actual value of the property of said corporation; that the enforcement of the provisions of the said so-called act against defendant corporation will reduce the receipts of said corporation yearly to the amount of over three hundred and nine thousand ($309,000), dollars which reduction, with the necessary and continuing costs of renewal of its yards, pens and other improvements, will leave no fair and reasonable compensation to the said corporation, nor any dividends or interest or compensation to your orator or to the other stockholders therein, and will destroy the value of the stock of your orator, and the stock of the other stockholders of said corporation, and the value of the property of said corporation, and render the same worthless, and if said so-called act is enforced against said corporation, it deprives said corporation, and all the stockholders therein, including your orator, of their property, as completely as by a special

act expressly providing for its depreciation, confiscation and destruction.

VIII.

That the said so-called act, approved March 3d, 1897, is unconstitutional and void as contrary to, and in conflict with the provisions of the constitution of the United States, and of the state of Kansas, and especially as contrary to, and in conflict with the provisions of article 8 of the original amendments to the constitution of the United States and in conflict with the provisions of section 9 of the Bill of Rights of the Constitution of Kansas, in this, to wit: That said so-called act permits the infliction of cruel and unusual punishment; that the last clause of section 7 of the so-called act provides that any person or persons violating the provisions thereof, shall be deemed guilty of a misdemeanor, and upon conviction therefor, "for each subsequent offense, he or they shall be fined in any sum not less than one thousand dollars, and by imprisonment in the county jail not less than six months"; but the maximum fine and imprisonment is not fixed, thereby permitting fines for each subsequent offense therein referred to to be of any amount exceeding one thousand dollars, and the infliction of imprisonment for any period of time exceeding six months, thereby authorizing and requiring the infliction for each subsequent offense referred to of excessive and unusual fines, and of cruel and unusual punishments, such fines and imprisonment being wholly unlimited; that said last clause of section 7 of said so-called act is also unconstitutional and void in this, to wit: that it is contrary to the provisions of the constitution of the United States in that it leaves to judicial discretion, without any limitation, the infliction of punishments for each subsequent offense therein referred to by excessive fines and cruel and unusual punishments.

IX.

That the said so-called act approved March 3d, 1897, is unconstitutional and void as contrary to, and in conflict with, the provisions of the constitution of the United States, and especially as contrary to and in conflict with the provisions of the fifth and fourteenth amendments thereof, because it is an illegal effort to interfere with the lawful rights, powers and privileges of the defendant corporation having the right and power to seek and obtain such compensation as it properly can for the use of its own property, and the sale of proper articles, and is also an illegal effort to interfere with and abridge the lawful rights, powers, privileges and immunities, of your orator and the other stockholders of defendant corporation, who are seeking and trying to obtain, by having invested in said stock, such compensation as they legally can for the use of their own money and property; and

therefore said so-called act is nothing else than an effort of the legislature of the state, and of the state of Kansas, to regulate the private business of a private corporation, and of private individuals, and to limit, abridge and destroy, the compensation which the said corporation may legally exact and collect for the use of its own property, and for its stockholders; and said so-called act, and the provisions thereof, have not been and are not now exercised, and are not proposed to be exercised, by said state in any matter involving the public health, or the public morals, or of any other legitimate police power.

X.

That the said so-called act, approved March 3d, 1897, and all of the various sections thereof, are unconstitutional and void as contrary to, and in conflict with, the third clause of section 8, article 1, of the constitution of the United States, which confers upon Congress power to regulate commerce with foreign nations and among the several states, and the several acts of Congress passed in pursuance thereof, in this, to wit:

That the said Kansas City Stock Yards Company, defendant, owns and operates extensive and costly stock yards, as aforesaid, in the county of Wyandotte, and State of Kansas, in the vicinity of the mouth of the Kansas river, in and near to what is known as Kansas City, Kansas, and in Jackson county, in the State of Missouri, and in and near to what is known as Kansas City, Missouri; and said yards in both states have all the usual and necessary conveniences for the reception, driving, feeding and shipment of cattle and other stock, and in carrying on its business and operating its yards, it receives almost daily, not only from this state and from the state of Missouri, but also from Texas, Colorado, Nebraska, and 23 other states and territories, great numbers of cattle and other stock, which are transported by the railroads to the said defendant corporation for care, feeding, and shipment in this state and Missouri, and when so transported by the railroads of the several states and territories to the yards of the defendant corporation in this state, and in the state of Missouri, they are yarded, fed, cared for, sold and shipped; that the yards in the state of Kansas and Missouri are so connected and carried on that the cattle and other stock go from one state to the other in the said yards, and are driven to and from the said yards in both states as the business of the stock raiser and shipper demands, and as the rules and regulations of the stock yards company require; that very frequently cattle so received from the states of Missouri and Kansas, and also from the other states aforesaid, are shipped from the yards of defendant to Chicago in the state of Illinois, and also to other cities and states outside of the states of Kansas and Missouri; that the said

business of the said corporation is not carried on exclusively within the limits of the state of Kansas, but as aforesaid stated, also within the state of Missouri and other states; that the said yards, railroad tracks and switches, and other property of the said corporation, are a part of commerce itself, are necessarily connected with interstate commerce, and that the said defendant is engaged in interstate commerce, and the provisions of the said so-called act affect commerce, and amount to a regulation of it within the meaning of the constitution of the United States; and therefore the provisions of the said so-called act belong to that class of powers which cannot be exercised by the legislature of Kansas, or by the state itself, or by any other state of the Union.

XI.

That the said so-called act, approved March 3d, 1897, and all of the various sections thereof are contrary to and in conflict with the provisions of an act of Congress, approved May 29th, 1884, entitled "An Act for the establishment of a bureau of animal industry, to prevent the exportation of diseased cattle, and to provide means for the suppression and extirpation of pleuro-pneumonia and other contagious diseases among domestic animals," and of an act of Congress, approved August 8, 1894, making appropriation for the Department of Agriculture for the fiscal year ending June 30th, 1895, and the regulations concerning cattle transportation, made and promulgated, in accordance with the provisions of said acts of Congress aforesaid, by the Secretary of the United States Department of Agriculture, at his office in Washington, District of Columbia, on January 27th, 1896, in this, to wit:

That under the provisions of section 4 of said so-called act, referred to herein as "Exhibit A," it is expressly provided that "there shall be but one yardage charged," and it is further provided therein that "for driving, yarding, watering and weighing of cattle, fifteen cents per head" may only be charged, demanded and collected by the defendant corporation for doing such service in the state of Kansas; that under the said regulations concerning cattle transportation, so made and published as aforesaid by the Secretary of the United States Department of Agriculture, places, pens and grounds are specially set apart by the defendant corporation, in the county of Wyandotte and state of Kansas, in the vicinity of the mouth of the Kansas river, consisting of about forty (40) acres of land, called "quarantine grounds," where cattle, transported by rail to the defendant corporation between the 15th day of February and the 15th day of November of each and every year, from the area south of or below the Federal quarantine line, legally established and designated under the acts of Congress

aforesaid, are unloaded to be fed, watered, cared for and sold for slaughter or shipped therefrom, as provided by the said regulations of the United States Department of Agriculture; that large numbers of cattle are so transported yearly to and unloaded in said places, pens, and grounds so set apart by the defendant corporation, in accordance with the said regulations concerning said cattle so transported; that such cattle must be placed in separate yards, pens and grounds, and no other cattle admitted thereto; that the same must be kept carefully cleansed and disinfected, at great cost, as provided by the regulations concerning such cattle so transported; that to water, feed and take care of cattle and other stock in the places, pens and grounds so kept by the defendant corporation for quarantine purposes, the prices fixed in section 4 of said so-called act, referred to herein as "Exhibit A," are wholly insufficient and not compensatory for the service, attention and yardage, absolutely necessary to comply with the said regulations aforesaid; and if the said defendant corporation is restricted to the maximum prices fixed in said section 4 of the said so-called act, then said cattle so transported by rail from said area south of or below said Federal quarantine line, cannot be properly fed, watered, cared for and yarded by the defendant corporation in accordance with the requirements of said regulations, as aforesaid stated, and therefore, on account of the maximum charges and prices fixed in said section 4 of said so-called act, to be collected for yardage, and the prices to be charged under section 5 of said so-called act, for hay, corn and other grain, if enforced against the said corporation, it might be compelled to refuse to permit said cattle to be unloaded for feed, water, care, attention, yardage, sale and shipment, as aforesaid, in its special pens, places and grounds so set apart for the reception of said cattle; and the provisions of said so-called act therefore interfere with the carrying out of the regulations aforesaid concerning said cattle transportion and the acts of Congress aforesaid, and will deprive the said defendant corporation and your orator and the other stockholders of said corporation from obtaining reasonable, fair and just compensation for the yardage and feeding of said cattle so transported through the state of Kansas from the area south of and below the Federal quarantine line aforesaid, and will also prevent and forbid the owners and shippers of such cattle from having sufficient, convenient and proper quarantine grounds in the county of Wyandotte, state of Kansas, where their said cattle can be fed, watered, cared for, sold or shipped, in accordance with the said regulations concerning such cattle transportation.

XII.

That by said section 8 of said so-called act, referred to herein as "Exhibit A," it is made the duty of the said Louis C. Boyle, as Attorney General of the state of Kansas, to prosecute all of the violations of the provisions of said act; that your orator fears that the said attorney general may cause the defendant corporation and any and all of its officers and agents, who shall violate any of its provisions, to be arrested and prosecuted; that he will attempt to enforce said so-called act through the courts of Wyandotte county, Kansas, and through the courts of the state of Kansas, by a multiplicity of criminal actions or proceedings against each and every person failing or refusing to comply with the provisions thereof, including the said defendant corporation and its officers and agents, thereby greatly harassing and annoying the said defendant corporation and its officers and agents and causing them great expense and consuming valuable time, unless the said defendant corporation, its officers and agents, shall put in force at once the said charges and prices specified in said sections 4 and 5 of said so-called act, and shall obey and carry out all of the terms and provisions of said act and each section thereof. And your orator fears that the said Louis C. Boyle, as attorney general, will proceed at once to carry into force said arrests and prosecutions unless immediately restrained by the order and injunction of this Honorable Court.

XIII.

That heretofore, to wit, on the 12th day of March, A. D. 1897, the Kansas City Stock Yards Company, and also Charles F. Morse, a director, vice-president and general manager of said corporation, and also at present the acting president of said corporation, and being the only managing director hereof, on account of the passage of said so-called act by the legislature of the state of Kansas, and the heavy penalties therein provided, and the fear that said Louis C. Boyle, as attorney general aforesaid, will at once proceed to arrest and prosecute said corporation and its officers and employes, and to save the defendant corporation, its officers, agents, servants and employes from being so arrested, harassed and annoyed by the said Louis C. Boyle, as attorney general, in attempting to enforce the provisions of said so-called act notwithstanding the invalidity of said act, publicly gave notice, that the provisions of the said so-called act would be applied by the defendant corporation, its officers and agents, to the operation of its yards in the state of Kansas, and that all the provisions therein contained concerning charges for yardage or otherwise, and all the prices for the sale and delivery of hay, corn and other grain, therein fixed, would be observed and carried

out in the state of Kansas; and that said so-called act and all the terms thereof would be observed and obeyed by the said defendant corporation, its officers and agents; and also publicly gave notice that on the 13th day of March, 1897, the prices fixed in said section 4 of said so-called act would be at once ordered and put in force in the operation of the yards and property of said defendant corporation in the state of Kansas, and that no greater prices would be demanded, exacted or collected for driving, yarding, watering and weighing cattle and other stock than as therein specified; and also, that said defendant corporation, its officers and agents, would sell and deliver, in the state of Kansas, at the prices fixed in said section 5 of said so-called act, hay, corn and other grain at the prices, terms and weight specified in said section 5 of the said so-called act; and also would in all other ways comply with the provisions of the said act, because of the heavy fines and penalties therein provided and because of the fear of arrests and prosecutions as hereinbefore alleged, notwithstanding the invalidity of such act.

XIV.

That heretofore, on the 22d day of March, 1897, your orator, as a stockholder of said defendant corporation and as interested in the economical and successful management of the business of said corporation, and who was then and there a stockholder and shareholder at the time of the transactions complained of, desiring to secure, on the part of the managing directors of said defendant corporation, a revocation of said order and directions of said defendant corporation, and of its said acting president, to put in force the provisions of said act aforesaid, did serve a notice in writing upon said defendant corporation and its directors, demanding that the said defendant corporation and the said managing directors aforesaid should continue to exact, receive and collect the rates and prices now existing in the operation of the business of the said defendant corporation for driving, yarding, watering and weighing stock, and also in selling and delivering hay, corn and other grain, so that its property would yield some compensation for services performed, sales made, and the business carried on, and that said corporation take proper legal proceedings to protect itself and its stockholders from the effect of such law.

And your orator alleges that said defendant corporation and its managing directors as aforesaid, have each refused to comply with the request of your orator, and wholly disregard the same. And your orator hoped that the said defendant corporation and its managing directors, and the other officers and agents of said corporation, would have complied with the reasonable request of your orator, as in justice and equity the said defendant corporation and its officers and agents

should have done; but now, so it is, that the said defendant corporation and such managing directors, and the other officers and agents of said defendant corporation, under their control and direction, to the great wrong and injury of your orator in the premises, absolutely refuse to comply with such reasonable and proper request, unless restrained and ordered so to do by some Court of competent jurisdiction.

And your orator further says that the cause of the failure of your orator to obtain a revocation of said order and directions of the said defendant corporation, and of the managing directors thereof, is as herein stated, that the said defendant corporation and the said directors, notwithstanding the invalidity of the so-called act of the legislature of the state of Kansas, referred to as "Exhibit A," are in fear of the annoyance, harassment, humiliation and expense to which the said defendant corporation and the said Morse and the other officers, agents, servants and employes of said corporation will be immediately subjected under the so-called act herein referred to, and especially so if its provisions are attempted to be enforced by Louis C. Boyle, as attorney general, as is now proposed and threatened by him, as aforesaid stated, or any other officer of the state of Kansas; and therefore the said defendant and the said directors absolutely refuse to secure to your orator such action, or any action, as he has demanded and desires on the part of and from the said corporation and of and from the managing directors thereof, unless so ordered by some court of competent jurisdiction as aforesaid.

And your orator further says that this suit is not a collusive one with the defendants or any other person or party, to confer on the above entitled court of the United States jurisdiction of a case which it would not otherwise have cognizance of, but your orator alleges that such suit is brought in good faith, for the protection of his own interests in the defendant corporation, and to prevent his said stock and his property therein from being depreciated, lost and destroyed, in violation of law and the provisions of the constitution of the United States as aforesaid.

XV.

And your orator says that, as before stated, the enforcement of the provisions of said so-called act against the defendant corporation, and its officers and agents, and the observance of the provisions of said so-called act, fixing a maximum charge to be made by said defendant corporation for services rendered, accommodations furnished, and hay, corn and other grain sold by the said defendant corporation, as is now proposed and threatened to be done by them, will deprive the defendant corporation of the power of exacting reasonable and fair compensatory rates for yardage and other services rendered, and for hay, corn

and other grain sold in its yards, and will deprive it of the use of its property and, in effect, of the property itself, without the due process of law; and if the said defendant corporation and its officers and agents are allowed to put in force the maximum rates and prices aforesaid, specified in said so-called act, your orator and the other stockholders of said defendant corporation will be unable to secure a reasonable per cent. on their money invested in said corporation, and in the stock and property thereof, and will be unable from the earnings of said defendant corporation, to obtain any reasonable and fair compensation, dividend or interest, on the actual value of their said stock, as the said defendant corporation cannot, under such maximum rates, charges and prices, earn any reasonable or fair compensation, interest, or dividend on the present actual value of its property.

And your orator says that he has the right to demand of the said defendant corporation and of the said Charles F. Morse, as acting president and managing director thereof, that the business of said corporation shall be carefully, properly, economically and successfully managed, as heretofore it has been done, and that such reasonable rates and compensation shall be exacted, demanded and collected for services rendered, accommodations furnished, and for the hay, corn and other grain sold by said defendant corporation, so that the said corporation may earn reasonable and fair compensation, interest or dividends, on the present actual value of its property, and if said corporation continues in force its present existing rates, charges and prices, it can and will earn reasonable and fair compensation, interest and dividends on the present actual value of its property, which can be properly divided among the stockholders of said corporation, including your orator.

And your orator further says he fears that if such destructive maximum rates, charges and prices are put in force, as aforesaid, your orator and the other stockholders of said defendant corporation will suffer great and irreparable injury, for which damages at law would be no adequate remedy; and said defendant corporation, and the officers and agents thereof, will carry out their said orders and directions aforesaid, unless restrained at once by the order and injunction of this Honorable Court.

In Consideration Whereof, and forasmuch as your orator is remediless in the premises at and by the strict rules of the common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable, therefore your orator prays the decree of this Honorable Court, adjudging that it is the duty of the said defendant corporation and the said Charles F. Morse, acting president, general manager and sole managing director of said

defendant corporation, for the benefit of said corporation and of your orator and the other stockholders of said corporation, to revoke at once the orders and directions to put in force the provisions of said so-called act, referred to herein as "Exhibit A" and the maximum charges and prices therein specified, and that it is the duty of said defendant corporation and the said Charles F. Morse, acting president, general manager and sole managing director, for the pecuniary benefit of your orator and the other stockholders of said defendant corporation, to maintain and operate the stock yards of said defendant corporation herein named in the same manner as they have been heretofore economically and successfully operated, and to charge for the services to be furnished, for yardage and other matters, the present existing charges (which are fair, reasonable and just) and also to sell and deliver hay, corn and other grain to stock raisers, shippers and other persons, upon the same terms and for the same prices and in the same way such articles are now sold by said defendant corporation, (which said prices under all the circumstances and conditions, are fair, reasonable and just); and that said defendant corporation, and each of its said officers and agents named as defendants herein, shall be enjoined from obeying, observing or putting into force any of the provisions of said so-called act; and that said order and injunction issue against said defendant corporation and the said Charles F. Morse, as acting president and sole managing director thereof, and each of the other officers and agents of said defendant corporation, made parties defendant herein, commanding them and each of them to refrain from putting into force the provisions of the said so-called act or any part thereof.

That the said Louis C. Boyle, as attorney general, be adjudged and decreed from attempting, as against said defendant corporation or any of its officers, agents, servants or employes, to enforce the provisions of the said so-called act or any part thereof. And also, that said order and injunction issue against the said Louis C. Boyle, as attorney general, commanding him to refrain from harassing and annoying, by prosecution or otherwise, under the provisions of the said so-called act, the defendant corporation, the said Charles F. Morse, or any of the other officers, servants, agents or employes of the said defendant corporation herein named.

That the final mandatory order and injunction of this court in this case issue, compelling said defendant corporation and the said Charles F. Morse and each of the other officers and agents of said defendant corporation herein named, to operate and maintain the said stock yards of the said defendant corporation in the state of Kansas as they are now operated and maintained, and that they exact and collect the

same charges for services performed and the same prices now demanded and received, wholly disregarding the said so-called act and all of the provisions thereof.

That a final order, judgment and decree issue that the said so-called act, approved March 3d, 1897, herein referred to as "Exhibit A" and made a part of this bill of complaint, is unconstitutional and void and of no validity, force or effect whatever; and that all of said defendants and each of them be enjoined from enforcing or attempting to enforce the said so-called act or any of the provisions thereof.

That a preliminary injunction may issue at once, upon the filing of this bill of complaint, against the said defendant corporation and each of its officers and agents named as defendants herein, during the pendency of this suit, strictly commanding and enjoining the said defendants and each of them, under the pains and penalties which may fall upon them and each of them in case of disobedience, that they forthwith and until the further order, judgment and decree of this court, desist from putting into force the said maximum rates, charges and prices specified in said so-called act aforesaid; and against the said Louis C. Boyle as attorney general, commanding and enjoining him to desist from enforcing or attempting to enforce the said so-called act against said defendant corporation and its officers and agents named as defendants herein, by arrest or otherwise, through the courts of the state or otherwise.

For in so much as your orator is without relief in a court of law, may it please this honorable court to grant unto your orator a writ of subpœna, to be directed to the Kansas City Stock Yards Company, a corporation, Charles F. Morse, as director, general manager, acting president and managing director of the said Kansas City Stock Yards Company; Harry P. Child, as the assistant general manager of the said corporation; Eugene Rust, as the general superintendent of the said corporation; Elliott E. Richardson, as the secretary of the said corporation; and Louis C. Boyle as attorney general of the state of Kansas, commanding them, and each of them, at a certain date and under the pain and penalty therein mentioned, personally to be and appear before this honorable court, then and there full and true, direct and perfect answers to make to all and singular the premises (but not under oath, answer under oath being hereby expressly waived); and further, to stand to and abide by such further order and direction herein as to this honorable court may seem just; and for such further and other order and direction herein as in equity and good conscience your orator may be entitled to, though not specifically prayed herein.

And your orator will ever pray.

FRANCIS LEE HIGGINSON,

WAGGENER, HORTON & ORR,
Solicitors for Complainant.

ALBERT H. HORTON, of Counsel.

United States of America, district of Kansas, ss.

In the circuit court of the United States for the district of Kansas, first division.

FRANCIS LEE HIGGINSON, *Complainant,*

against

KANSAS CITY STOCK YARDS COMPANY, a corporation, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON, and LOUIS C. BOYLE as attorney-general of the state of Kansas, *Defendants.*

No. ——
In equity.

United States of America, district of Massachusetts, ss.

Francis Lee Higginson, of lawful age, being duly sworn, says: that he resides in Boston, in the state of Massachusetts and is a citizen of said state; that he is the complainant named in the foregoing bill of complaint; that this affiant has read said bill of complaint and knows the contents thereof and that the facts therein alleged are true; that the suit to be instituted by the filing of said bill is not a collusive one, nor is it filed in collusion with the defendants named therein or with any of them nor for the purpose of conferring upon said court, or any court of the United States, jurisdiction of a case of which it would not otherwise have jurisdiction; that on the 22d day of March, 1897, this affiant sent to the board of directors a communication, of which the following is a copy:

BOSTON, March 22, 1897.

To the Directors of the Kansas City Stock Yards Company:—

The undersigned, a stockholder of the Kansas City Stock Yards Company, owing and holding 296 shares of the capital stock, hereby calls your attention to an act recently passed by the Legislature of the State of Kansas, entitled "An Act defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating all charges thereof, and removing restrictions in the trade of dead animals, and prescribing penalties for violations of this act," approved March 3d, 1897, which attempts to fix maximum rates to be charged by certain stock yards companies in that state for the yarding, driving, watering, weighing and feeding of live stock delivered to such yards and exposed for sale or feeding. This law applies to the Kansas City Stock Yards Company, and its operation will be most disastrous to its interests. I am informed and confidently believe that the result of an enforcement of the provisions of the law in question will be the reduction of the earnings of the company below the point at which the necessary operating expenses and a reasonable return to the stockholders can be realized.

I call your attention to several grave objections to this law:

1. The maximum charges prescribed by the law are unjust and unreasonable because they do not afford the company sufficient compensation to enable it to pay its necessary expenses of operation and a fair and reasonable return to its stockholders.

2. The law is not general and uniform in its operation throughout the state of Kansas, in that it does not include within its provisions all stock yards in that state doing business for the public.

3. The law is an attempted interference upon the part of the state of Kansas with Interstate Commerce.

4. The penalties provided by the law for its violation, by fine and imprisonment, are cruel and unusual.

There are many other serious objections to the law affecting its validity and legality, but those mentioned above justify me as a stockholder of the company in insisting that the directors should take some measure to effectually protect the interest of myself and the other stockholders of the company against the operation of said law.

I demand and insist that the company shall decline to put in force and operation the charges limited by said law, and that it by proper legal proceedings test the validity of the statute in the courts.

Respectfully, ——— ———

That on the same day he received from the Executive Committee of said Directors a reply of which the following is a copy:

BOSTON, March 22, 1897.

Mr. Francis Lee Higginson, Boston: DEAR SIR—Your communication to the directors of the Kansas City Stock Yards Company of this date, in which you insist and demand that the Company decline to put in force and operation the rates of charges fixed and limited by the recent Act of the Kansas Legislature, and that it test the validity of the Act by proper legal proceedings, was this day laid before the Executive Committee of this Company, which, after due consideration, passed the following vote:

"*Voted:* That the Chairman of this meeting be and he hereby is authorized to notify Mr. Francis Lee Higginson that his communication to the directors of date of March 22d, 1897, has been laid before the Executive Committee, and has been carefully considered; that while the directors are satisfied that the operation of the law in question would be most disastrous to the company, yet, in view of the severe penalties, by both fine and imprisonment, imposed for a violation of the law, they do not feel justified in complying with the request and demand of Mr. Higginson. Respectfully, N. THAYER, Chairman.

Francis Lee Higginson.

Subscribed and sworn to before me at my office in the City of Boston, Mass., this 22d day of March 1897. LOUIS A. FELIX,

[SEAL.] Notary Public.

"EXHIBIT A."

Committee Substitute for House Bill No. 87.

AN ACT

Defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating all charges thereof, and removing restrictions in the trade of dead animals, and prescribing penalties for violations of this act.

Be it enacted by the Legislature of the State of Kansas:

SECTION 1. Any stock yards within this state, into which live stock is received for the purpose of exposing or having the same exposed for sale or feeding, and doing business for a compensation, and which for the preceding twelve months shall have had an average daily receipt of not less than one hundred head of cattle, or three hundred head of hogs, or three hundred head of sheep, are hereby declared to be public stock yards.

SEC. 2. Any person, company or corporation owning or operating any such public stock yard or stock yards in this state is hereby declared to be a public stock yards operator, whether living or being within this state or not.

SEC. 3. Every such public stock yards operator or operators shall annually on the 31st day of December of each year, file with the secretary of state, an itemized statement certified and sworn to, setting forth the number of head of cattle, calves, sheep, hogs, horses and mules received in his or their public stock yards during the year next preceding.

SEC. 4. It shall be unlawful for the owners, proprietors, or the employes of the owners or proprietors of any such public stock yards within this state, to charge for driving, yarding, watering and weighing of stock, greater prices than the following, For driving, yarding, watering and weighing of cattle, 15 cents per head; calves 8 cents per head; hogs 6 cents per head; sheep 4 cents per head; and there shall be but one yardage charged.

SEC. 5. It shall be unlawful for the owner, owners or proprietors, or their employes, of any such stock yards within this state, to sell and deliver at the rate of less than two thousand pounds for a ton of hay, or any part thereof, the same to be of good quality, or to charge for or to sell the same at more than one hundred per cent. above the average market price, or value of such hay upon the markets of the towns or cities wherein such stock yards are located, upon the day preceding such sale and delivery; and it shall also be unlawful for any such owners, or proprietors, or employes, to sell and deliver less than seventy pounds of corn in the ear for a bushel, or less than fifty-six

pounds of shelled corn for a bushel, or to charge for or to sell the same at more than one hundred per cent. above the average market price or value of such ear corn or shelled corn on the markets of the towns or cities wherein such stock yards are located, on the day next preceding such sale and delivery. All feed not above named shall be sold for no greater per cent. of profit than hereinbefore provided.

SEC. 6. It shall be unlawful for the owners or proprietors of any stock yards to prohibit the owner or owners, or the representatives of any owner or owners of any dead stock in such yard or yards from selling such dead stock to any person or persons.

SEC. 7. That any person or persons violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined for the first offense not more than one hundred dollars, for the second offense not less than one hundred dollars nor more than two hundred dollars; and for the third offense not less than two hundred dollars nor more than five hundred dollars and by imprisonment in the county jail not exceeding six months for each offense; and for each subsequent offense he or they shall be fined in any sum not less than one thousand dollars and by imprisonment in the county jail not less than six months.

SEC. 8. It is hereby made the duty of the attorney general to prosecute all violations of the provisions of this act.

SEC. 9. All acts or parts of acts in conflict with this act are hereby repealed.

SEC. 10. This act shall take effect and be in force from and after its publication in the official state paper.

I hereby certify that the above bill originated in the House, and passed that body March 1st, 1897. W. D. STREET, Speaker of the House.
A. D. GILPIN, Chief Clerk of the House.

Passed the Senate March 2, 1897. A. M. HARVEY, President of the Senate.
M. WATSON, Secretary of the Senate.

Approved March 3, 1897.
J. W. LEEDY, Governor.

Endorsed: No. 7453. Francis Lee Higginson vs. Kansas City Stock Yards Company, *et al.* Bill of complaint. Filed Mch. 26, 1897. GEO. F. SHARITT, Clerk.

United States of America, district of Kansas, ss.

In the circuit court of the United States for the district of Kansas, first division.

FRANCIS LEE HIGGINSON, *Complainant*,

vs.

KANSAS CITY STOCK YARDS COMPANY, a corporation, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON, and LOUIS C. BOYLE, as attorney general of the State of Kansas, *Defendants.*

No. 7453. In equity.

WHEREAS, Francis Lee Higginson has presented his bill of complaint and affidavit in the above entitled suit, wherein, among other things, he prays that the Kansas City Stock Yards Company, Charles F. Morse, as the general manager, acting president and sole managing director of said corporation, Harry P. Child, as assistant general manager of said corporation, Eugene Rust as general superintendent of said corporation, and Elliott E. Richardson, as secretary of said corporation, be commanded and enjoined and restrained from obeying and observing a so-called act of the legislature of the state of Kansas, approved March 3d, 1897, and known as "Committee Substitute for House Bill No. 87", entitled "An Act defining what shall constitute public stock yards, defining the duty of the person or persons operating the same, and regulating the charges thereof and removing restrictions in the trade of dead animals and prescribing penalties for the violation of this act," and from putting into force in the business of said defendant corporation the maximum rates, charges and prices specified in the so-called act aforesaid; and wherein, among other things, he prays that the said defendant Louis C. Boyle, as Attorney General of the state of Kansas, be enjoined and restrained from enforcing or attempting to enforce the said so-called act or any of the provisions thereof against the said defendant corporation, its officers, agents, servants and employes by arrest, criminal prosecution or otherwise, as more particularly shown in the bill of complaint herein; and that a final injunction issue commanding said defendant corporation and its officers and agents named as defendants herein to operate and maintain the said defendant corporation and the business thereof, as in said bill of complaint prayed.

NOW THEREFORE, IT IS ORDERED: That the said defendants and each of them show cause before this court at the city of Topeka, on Friday, April 2d, A. D. 1897, at two o'clock P. M. of said day, or as soon

thereafter as counsel can be heard, why the prayer of said bill of complaint for a preliminary injunction as therein prayed for should not be granted, and why the said defendants and each of them, their officers, assistants, agents, servants and employes should not be enjoined and restrained during the pendency of this suit, from obeying, observing and enforcing the provisions of the so-called act of the legislature of the state of Kansas herein referred to, and why the said complainant should not have the relief prayed for in said bill of complaint; that pending the hearing of this matter, the said defendant corporation and Charles F. Morse, as general manager, acting president and sole managing director of said defendant corporation, and the other officers and agents of said corporation named as defendants herein be and they are hereby ordered and restrained to desist and refrain from obeying, observing or putting into force in the operation of the said defendant corporation's business the maximum rates, charges and prices specified in said so-called act aforesaid; and the said Louis C. Boyle as attorney general of the state of Kansas is hereby ordered and restrained to desist and refrain from enforcing the provisions of said so-called act against the said defendant corporation, its officers, agents, servants and employes, and from arresting or criminally prosecuting in the courts of the state or otherwise the said defendant corporation, its officers, agents, servants and employes on account of any non-observance or disobedience of the said so-called act or any of its provisions, or on account of the failure to fully comply with the terms thereof.

Let a copy of this order, together with a copy of the bill of complaint herein, duly sworn to, be served upon the defendants forthwith.

March 26, 1897. CASSIUS G. FOSTER, Judge.

Endorsed: No. 7453. Restraining order. Filed March 26, 1897.
GEO. F. SHARITT, Clerk.

In the circuit court of the United States, for the district of Kansas, first division.

CHARLES U. COTTING, *Complainant*,
vs.
KANSAS CITY STOCK YARDS COMPANY, a corporation, et al., *Defendants*.
No. 7427. In equity.

FRANCIS LEE HIGGINSON, *Complainant*,
vs.
KANSAS CITY STOCK YARDS COMPANY, a corporation, et al., *Defendants*.
No. 7453. In equity.

JOURNAL ENTRY.

Now comes the said complainants, by their solicitors, Waggener, Horton & Orr, and the Kansas City Stock Yards Company, by its solicitor, I. P. Dana, and L. C. Boyle, as Attorney General, in person as well as by his solicitor, David Martin, and the other said defendants also appearing by their solicitor, I. P. Dana;

And thereupon, comes on for hearing the application of the complainants for the consolidation of said suits, and it appearing to the court that the causes are of like nature and relative to the same questions, it is ordered that the said causes shall be consolidated to be heard together and as one suit, so to avoid unnecessary costs in said suits and to prevent delay in the hearing thereof.

And thereupon, also comes on for hearing the motion of the complainants to amend their bills of complaint, as prayed for, which motions, upon due consideration thereof, are allowed, and the amendments ordered to be filed and made a part of the bills of complaint filed herein; the defendant, L. C. Boyle, as Attorney General, duly objecting and excepting to filing the amendments to the bills or either of them.

CASSIUS G. FOSTER, Judge.

Endorsed: Filed April 2, 1897. GEO. F. SHARITT, Clerk.

In the circuit court of the United States for the district of Kansas first division.

CHARLES U. COTTING, *Compainant*,
vs.
KANSAS CITY STOCK YARDS COMPANY, a corporation, *Defendants.* — No. 7427.

Cases consolidated.

FRANCIS LEE HIGGINSON, *Complainant*,
v.
KANSAS CITY STOCK-YARDS COMPANY, a corporation, et al., *Defendants.* — No. 7453.

This cause further coming on to be heard on the 3d day of April, 1897, upon motion of complainants for a preliminary injunction, the complainants appearing by their solicitors, Waggener, Hortor & Orr and D. R. Hite; L. C. Boyle, as Attorney General, appearing in person as well as by his solicitor, David Martin, and the Kansas City Stock Yards Company and the other defendants appearing by their solicitors, Pratt, Dana & Black; further hearing is had upon the objection of the defendant L. C. Boyle as Attorney General, to the hearing or receiving of any evidence on the part of the complainants in support of their motion for a preliminary injunction under the bills of complaint;

And thereupon, the court directed the said complainants to introduce and read their affidavits on file in said suits, in support of their motion for a preliminary injunction. The affidavits in behalf of the complainants were then duly offered and read as evidence in support of the motion of complainants for the preliminary injunction prayed for, (which affidavits, evidence and the rulings of the court permitting the same to be offered and read were duly objected and excepted to by L. C. Boyle, as Attorney General); and thereon, counsel for the respective parties having been heard, the motion of the complainants for a preliminary injunction, together with the affidavits and evidence submitted in support thereof, were taken under advisement by the court until Monday, April 12th, at ten o'clock A. M.

The above causes further coming on to be heard upon the motion of complainants for a preliminary injunction, as prayed for, the several parties thereto being present by their solicitors, as above stated, the court handed down its written opinion and decision upon certain matters involved in said suits, which it ordered to be filed.

The complainants duly excepted to the opinion, decision and rulings of the court as set forth in said written opinion aforesaid, that said act of March 3d, 1897, referred to in the bills of complaint filed herein is not class legislation, and is not special legislation; that the Kansas City Stock Yards is such a corporation as justifies the legislature in imposing rules and regulations for its government; that the said act of March 3d, 1897, is applicable to and may be enforced against the defendant stock yards company upon the ground that its business does not come under the designation of interstate commerce; that said act of the legislature is not contrary to or in conflict with the provisions of the Act of Congress of May 29th, 1894, entitled "An Act for the establishment of a bureau of animal industry, and to prevent the exportation of diseased cattle," and the amendments thereto, and the regulations of the Department of Agriculture promulgated thereunder.

L. C. Boyle, as Attorney General, also duly excepted to receiving any proof under the said bills, upon the ground that they present no cause of action; that no equity is alleged therein; and that he is improperly made a party thereto and asks leave to present testimony on his behalf in opposing a temporary injunction. It is thereupon ordered by the court in order that the court may have all the facts before it, so as to form an intelligent judgment as to whether the preliminary injunction prayed for by the complainants should be granted, that George W. Clark of Topeka, Kansas, be appointed special master, with power to take testimony and report the same with his findings to this court on or before June 1st, 1897, as to all matters and things in issue upon the hearing of the preliminary injunction prayed for, under the bills of complaint filed herein, including among other things, the cost of the Kansas City Stock Yards, the present value of the property of the Kansas City Stock Yards Company, the receipts and expenditures thereof, the manner of its operation, including its transportation of cattle and other stock from Kansas to Missouri and other states and from Missouri to Kansas and other states, and the handling of the same as interstate commerce (if any such interstate commerce is carried on by the defendant corporation) and such other matters as may be pertinent upon the hearing of the application for the temporary injunction prayed for, to which reference and the introduction of any evidence before the master under the bills of complaint filed herein, L. C. Boyle, as Attorney General, then and there duly excepted, and also to such reference the complainants then and there duly excepted, on the ground that upon the verified bills, affidavits and evidence already filed and presented to the court in support of the preliminary injunction aforesaid, the complainants are entitled to the granting of such preliminary injunc-

tion at once, and without any reference or further affidavits or evidence being introduced in support thereof.

The further hearing of the preliminary injunction prayed for is continued to Tuesday, the 1st day of June, 1897, at ten o'clock A. M.

CASSIUS G. FOSTER, Judge.

Endorsed: No. 7427 7453. Order. Filed Apl. 12, 1897.
GEO. F. SHARITT, Clerk.

In the United States Circuit Court,
District of Kansas.

CHARLES U. COTTING,
vs.
L. C. BOYLE, Attorney General, *et al.*

FRANCIS LEE HIGGINSON,
vs.
L. C. BOYLE, Attorney General, *et al.*

CASES CONSOLIDATED.

STIPULATION.

It is hereby stipulated by the parties hereto:

First: The defendant, Boyle, as attorney general, admits that there was no collusion between the complainant in the above entitled suits, and the defendant, The Kansas City Stock Yards Company, or any of its officers, directors or attorneys, solicitors or counsel in respect to the bringing or prosecution of the said bills or either of them, and that the said bills were not, when the same were exhibited, and are not collusive to confer upon a court of the United States, jurisdiction of the said causes.

Second: The defendants in the said bills shall on or before the 13th of Oct., '97, file their several answers responsive to the allegations of said bills, and on or before 15th Oct., '97, the plaintiffs shall file replications to said answers.

Third: The testimony taken by the respective parties before George W. Clark, special master in these cases, upon the reference to him, upon the motions of the plaintiffs for injunctions according to the prayer of said bills, together with the stipulations of the parties, the report of the said master and all exhibits, be taken and read in evidence upon the hearing of said causes with the same force and effect as if the same had been taken upon issues joined between parties upon the said bills, answers and replications, and the final hear-

ing of said causes shall commence at 2 o'clock on October 18, 1897, before Judge Foster and Judge Thayer, judges of said court, upon the pleadings, proofs, master's report and exhibits aforesaid, without further testimony from either party, and a decree be rendered thereon.

Fourth: The unsuccessful party on said hearing shall immediately take the necessary proceedings to appeal the said causes to the proper Court of Appeals and file the record therein, and both parties shall join in an application to the court to which the appeal shall be taken, to advance the causes upon the docket of said court, and as far as they are able to secure a speedy hearing of said appeal.

J. M. WOOLWORTH, and
WAGGENER, HORTON & ORR, and
D. R. HITE,
Solicitors for the Plaintiffs.

October 7th, 1897.

L. C. BOYLE,
Attorney General.
PRATT, DANA & BLACK,
Solicitors for Kansas City Stock Yards Co.

Endorsed: Filed Oct. 9, 1897. GEO. F. SHARITT, Clerk.

In the circuit court of the United States,
for the district of Kansas.

CHARLES U. COTTING, *Complainant,*
vs.
KANSAS CITY STOCK YARDS COMPANY,
CHARLES F. MORSE, *et al., Defendants.*
} No. 7227.

Now comes the complainant herein, by D. R. Hite and Waggener, Horton & Orr, his solicitors, and on motion it is ordered by the court, that the bill of complaint filed in this suit be and is now taken as confessed by defendants, The Kansas City Stock Yards Company, Charles F. Morse, Harry P. Child, Eugene Rust and Elliott E. Richardson.

To the Clerk of said Court: Enter the above in the order book in equity of said court.

D. R. HITE, and
WAGGENER, HORTON & ORR,
Solicitor for Complainant.

Endorsed: Filed Oct. 20, 1897. GEO. F. SHARITT, Clerk.

In the circuit court of the United States, for the district of Kansas.

FRANCES LEE HIGGINSON,
vs.
KANSAS CITY STOCK YARDS COMPANY, *et al.* } No. 7453.

Now comes the complainant herein, by Waggener, Horton & Orr, and D. R. Hite, his solicitors, and on motion it is ordered by the court, that the bill of complaint filed in this suit be and is now taken as confessed by defendants, The Kansas City Stock Yards Company, Charles F. Morse, Harry P. Child, Eugene Rust, and Elliott E Richardson.

To the Clerk of said Court: Enter the above in the order book in equity of said court.

D. R. HITE, and
WAGGENER, HORTON & ORR,
Solicitors for Complainant.

Endorsed: Filed Oct. 20, 1897. GEO. F. SHARITT, Clerk.

In the circuit court of the United States, for the district of Kansas, first division.

CHARLES U. COTTING, *Complainant*,
v.
KANSAS CITY STOCK YARDS COMPANY, a corporation, C. F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON and LOUIS C. BOYLE, as attorney general of the state of Kansas, *Defendants*. } No. 7427. In equity.

FRANCIS LEE HIGGINSON, *Complainant*,
v.
KANSAS CITY STOCK YARDS COMPANY, a corporation, C. F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON and LOUIS C. BOYLE, as attorney general of the state of Kansas, *Defendants*. } No. 7453. In equity.

DECREE PRO CONFESSO.

The above causes having been brought on for hearing, and it appearing that the defendants, the Kansas City Stock Yards Company, C. F. Morse, Harry P. Child, Eugene Rust and Elliott E. Richardson

"Where the term of office of a public officer, appellant in his official capacity, expires pending the appeal, his successor in office must be substituted as appellant."

Louisiana Mutual Life Ins. Co. v. Costa, 32 La. An. 1.

"A change in the incumbent of an office, pending a suit, does not abate the suit and make it necessary to begin *de novo*, if the successors are charged with the same duties."

McDuff v. Beauchamp, 50 Miss. 531.
Hardee v. Gibbs, Id. 802.

"A suit against the trustees of a school district to recover the teacher's wages does not abate, and is not discontinued by the expiration of the defendants' term of office, and the choice of other persons to succeed them."

Colegrove v. Breed, 2 Denio, 125.

"Where a decree is passed by the court below against an executor, being the defendant in a chancery suit, and, before an appeal is prayed, the executor is removed by a court of competent jurisdiction, and an administrator *de bonis non* with the will annexed is appointed, all further proceedings, either by execution or appeal, are irregular, until the administrator be made a party to the suit."

Taylor v. Savage, 42 U. S. (1 How.) 282; id., 43 U. S. (2 How.) 395.

"The resignation of an executor or administrator will not abate a suit then pending. If there

be more than one, the suit will proceed in the name of or against those remaining. If he is the sole representative of the estate, the suit will be revived in the name of his successor."

Elliott v. Eslava, 3 Ala. 568.

"An action brought by a general administrator, who afterwards resigns his office, may be revived in the name of his successor."

Russell v. Erwin, 41 Ala. 292.

"When a public administrator goes out of office, a suit brought by him does not, on that account, abate, but may be revived in the name of his successor, on proof of such succession, without *scire facias*."

Carley v. Barnes, 11 Ark. (6 Eng.) 291.

"A suit against the public administrator does not abate by his removal from office; but, on application by the plaintiff, the new administrator will be substituted in the place of the former one."

Burras v. Looker, 2 Edw. Ch. 499.

If this court shall be of opinion that A. A. Godard, as Attorney General of the State of Kansas, cannot be substituted as a party herein, then the court must necessarily decide that A. A. Godard, as such Attorney General, should look after this appeal against his office or in behalf of his office, and that the refusal of this court to substitute the new Attorney General in the place of Louis

C. Boyle does not have the effect to abate the appeal, nor cause its dismissal on motion. (*Railway v. Martin, as Treasurer*, 53 Ohio St. 386–402.) In such case, the action may proceed as commenced, but the new Attorney General must have exclusive control in behalf of his office.

III.

THE DECISIONS IN UNITED STATES v. BOUTWELL, 84 U. S. 604; THE WARNER VALLEY STOCK COMPANY v. SMITH, 165 U. S. 28, AND SIMILAR DECISIONS OF THIS COURT, HAVE NO APPLICATION TO THE PRESENT APPEAL.

There are many decisions of this court where a suit in equity has been brought against the Secretary of the Interior or some other official to compel the performance of an act which the law specially enjoins as a duty resulting from such office, trust or station, that the same abates upon the resignation of the office. See —

The Secretary v. McGarrahan, 9 Wall. 298.
United States v. Boutwell, 84 U. S. 604.
United States ex rel. Warden v. Chandler, 122 U. S. 643.
United States ex rel. Long v. Lochren, 164 U. S. 701.
Warner Valley Stock Company v. Smith, 165 U. S. 28.

But in our opinion, these decisions do not apply in the appeal pending.

"The office of a writ of mandamus is to compel the performance of a duty resting upon the person to whom the writ is sent. What the law regards, and what it seeks to enforce by a writ of mandamus, is the personal obligation of the individual to whom it addresses the writ. If he be

an officer, and the duty be an official one, still the writ is aimed exclusively against him as a person, and he only can be punished for disobedience."

U. S. v. Boutwell, supra.

In mandamus proceedings, a demand and refusal are prerequisites to the institution of the same.

Dobbs v. Stauffer, 24 Kan. 127.
State v. Karney, 3 Kan. 88.
Kendall v. Stokes, 3 How. (U. S.) 100.

A mandamus proceeding cannot be successfully maintained, unless the party defendant has refused to perform his duty,—has disobeyed a statute or order requiring the performance by him of some duty resulting from an office, trust or station.

In *United States v. Boutwell, supra*, as Secretary of the Treasury of the United States, Mr. Boutwell refused to pay an order drawn on the Treasury of the United States. It was alleged in that proceeding that he had disobeyed his duty; that he had refused to comply with the provisions of the statute; that he was a disobedient officer.

In *Warner Valley Stock Company v. Smith, supra*, this court said:

"The main object of the present bill was to compel the defendant Hoke Smith, as Secretary

of the Interior, to prepare patents to be issued to the plaintiff for the lands in question. The mandatory injunction prayed for was in effect equivalent to a writ of mandamus to him."

So, in that case, the proceedings were for the purpose of compelling Hoke Smith, Secretary of the Interior, to perform an official duty, alleging that he was a disobedient officer, and had refused to comply with certain statutes of the United States. In the Boutwell case, in the Hoke Smith case, and all other similar cases decided by this court, where it has been held that an abatement takes place by the expiration of the term of office, the proceedings have been against officers *whose alleged delinquency was personal.* Of course, in such cases, the expiration of the term of the officer would abate the proceeding, because it cannot be assumed that the successor would also be a disobedient officer and refuse to perform his duty. The successor of a disobedient officer "could not be brought into court in a mandamus proceeding against his predecessor, and be mulcted in costs, for the default of such predecessor without any delinquency of his own." Our motion does not present any question decided in the mandamus cases. Louis C. Boyle, as

Attorney General of the State of Kansas, was expressly charged by section 8 of the act of 1897, "to prosecute all violations of the provisions of said act." The suits commenced in the court below were not for the purpose of compelling Louis C. Boyle individually or as Attorney General of the State of Kansas to comply with the provisions of the act of 1897. No writ was prayed for by the appellants to compel Louis C. Boyle individually or as Attorney General to commence prosecutions under said chapter 240. On the other hand, it was alleged in the bills exhibited in the court below that Louis C. Boyle, as Attorney General of the State of Kansas, was specifically charged, by virtue of his office, with the administration of a State enactment, which it was alleged could not be enforced against the Kansas City Stock Yards Company, one of the appellees, without violating the constitutional rights of the appellants, stockholders in that corporation. If said chapter 240 is [redacted] constitutional, when attempted to be enforced as against the Kansas City Stock Yards Company, then the Attorney General of the State of Kansas, in prosecuting all violations of the provisions of that act against the Kansas City Stock Yards Company,

is in the due performance of his duty. Being obedient to that statute, he is expected to perform that duty. *The appellants have the right to have this court determine whether said chapter 240 is an unconstitutional enactment. If it is a constitutional enactment, A. A. Godard, as Attorney General of the State of Kansas, the successor of Louis C. Boyle, is also charged with the administration of the provisions of that enactment, and the affidavit on file in this court shows that the new Attorney General intends and proposes to act under the law of 1897 against the Kansas City Stock Yards Company. It would be a reflection upon A. A. Godard, as Attorney General of the State of Kansas, to intimate that he would not perform his official duty.*

Therefore, the bills were exhibited in the court below, not on account of any alleged delinquency personal to Louis C. Boyle. The question was, and also is with the new Attorney General, whether said chapter 240, as applied to the Kansas City Stock Yards Company, may be enforced by that officer,—not as an individual, but as an officer of the State of Kansas. As it was presumed in the court below that Louis C. Boyle, as Attorney General, would perform the duties imposed upon

him by said act, unless prevented from so doing by pending legal proceedings, or by the declaration of this court that said chapter cannot be enforced without violating the constitutional rights of the appellants, so, since A. A. Godard, as Attorney General of the State of Kansas, has succeeded to the office formerly possessed by Mr. Boyle, it must also be presumed that he will perform the duties imposed upon him by said act, unless prevented from so doing by the courts. The duties devolving upon Louis C. Boyle, as Attorney General of the State of Kansas, concerning said chapter 240, are the same duties devolving upon A. A. Godard, as Attorney General of the State of Kansas, the successor of Mr. Boyle. Boyle is out of office. He is no longer connected with this appeal, and therefore has no further standing in this court to appear in this motion or any other motion or hearing of this case.

In *Secretary v. McGarrahan*, 9 Wall. 298, after the official to whom the writ of mandamus was directed resigned, his successor was the person that came to this court and objected to being a party in that proceeding, and to being placed unwillingly in the position of an officer alleged to have been disobedient. If any objection can be

made to the motion to substitute the new Attorney General of the State of Kansas for the defunct official, that objection must come from A. A. Godard, the present Attorney General,—not from a defunct party,—one dead in law, who has no right to appear in this appeal in this court either personally or by counsel.

A. A. Godard, as Attorney General of the State of Kansas, has filed his appearance in the appeal, is present in court by his counsel, and he is the Attorney General that is to be heard in the present and future progress of this case. Mr. Boyle has retired from office. He is no longer interested in the appeal or any proceeding therewith connected. Therefore, if he appears or attempts to appear to this motion by counsel, brief or oral argument, we protest that he does so in violation of the rights of appellants and the rights of A. A. Godard, the present Attorney General of the State of Kansas, in violation of all precedent and without authority.

In *Railway v. Martin*, 53 Ohio State, 386, it was decided:

An action against a county treasurer for the purpose of enjoining the collection of taxes, is in its nature against the office, rather than against the person

filling such office. In case of a change of incumbent, the action may proceed as commenced, or the new treasurer may be substituted.

It was observed in that opinion that—

"The action in such cases is regarded as against the treasurer, whoever it may be. The new treasurer may, on motion, be substituted in the place of the retiring one. The treasurer in office should, as one of his official duties, take charge of and look after all actions against or in behalf of his office."

So, in this case, the Attorney General in office, A. A. Godard, should, as one of his official duties, take charge of and look after this appeal.

Again, as Louis C. Boyle is *functus officio*, he is, so far as this appeal is concerned, the same as if he were dead. He cannot be heard in this court upon this appeal. He cannot file any motion or brief. He is not permitted to appear here, to represent either of the appellees. Therefore, we believe that his successor, being charged with the duties of enforcing all of the statutes of the State of Kansas, and being expressly charged with the enforcement of the act of 1897 referred to, should be made a party herein.

2 Foster's Fed. Pr., § 482, pp. 1030–1034.

But further, if this court should decide that the retirement of Louis C. Boyle from the office of Attorney General, abates the appeal, and that A. A. Godard, as Attorney General of the State, cannot be made a party herein, or appear and argue this cause upon its merits, then this court must decide that the appellants, as stockholders of the Kansas City Stock Yards Company, have no legal rights which the courts are bound to respect, notwithstanding it should appear in this case upon argument that the decree of the Circuit Court of the United States for the District of Kansas was erroneous, and that the act of 1897 was unconstitutional. If the retirement from office by Louis C. Boyle on January 9th, 1899, abates the appeal, then his retirement from office immediately after the entry of the decree of October 28th, 1897, would have prevented an appeal, and, as before stated, if the resignation of the Attorney General of Kansas, every time a decree is entered in a suit brought to contest the constitutionality of the act of 1897, would abate the suit, the defeated complainant could never appeal to this court, or have the decree of the court below reviewed. This would be a denial not only of justice, but of the ordinary rights of

a suitor in court. If this appeal were dismissed, it would be insisted by opposing interest that the decree in the court below is *res adjudicata*, and therefore that the appellants can never be heard again in any court to contest the constitutionality of the act of 1897. Thus, without any fault of their own, they would be bound arbitrarily by the alleged erroneous decree, without any right to have the same re-examined or reviewed by the proper legal tribunal, simply because one of the appellees, being an officer, retires from his official position.

The appellants executed a bond for the benefit of the Attorney General of the State of Kansas, conditioned that they "shall prosecute said appeal to effect and answer all costs and damages if they fail to make their appeal good." The appeal has been properly taken, and is now pending in this court, and the appellants are ready "to prosecute said appeal to effect, and make their appeal good." But if the resignation or retirement of Louis C. Boyle from his office can defeat the appeal, then the appellants are helpless, and are required to pay large sums of money without being given an opportunity to prosecute their appeal. (Extracts, 72, 73.)

The final decree also provided —

"That in addition to the ordinary appeal bond, the Kansas City Stock Yards Company shall make and file in this court its bond in the penal sum of two hundred thousand dollars, payable to the clerk of this court and his successors in office, for the benefit of whom it may concern, conditioned that in the event the decree dismissing the bills is affirmed, it will, on demand, pay to the party or parties entitled thereto all overcharges for yarding and feeding live stock at its stock yards in Kansas City, Kansas, and Kansas City, Missouri, which it may have exacted in violation of sections 4 and 5 of the Kansas statute relative to stock yards, approved March 3, 1897, since an injunction was first awarded herein, to wit, on the 13th day of March, 1897, and that it will in like manner pay such overcharges, if any, as it may continue to exact in violation of said statute during the pendency of said appeal, — said obligation to be void if the statute in question shall be pronounced invalid by the Supreme Court of the United States." (Extracts, 56, 57.)

On October 28, 1897, the Kansas City Stock Yards Company gave the supersedeas bond of two hundred thousand dollars referred to in the decree. (Extracts, 71.)

If the resignation or retirement of an attorney general from his office shall prevent this court

from hearing this appeal when it is reached upon call, then the appellants will have no hearing upon the constitutionality of said act of 1897, and this court will have no opportunity to "pronounce invalid the statute in question." Can it be claimed that by reason of an attorney general resigning or retiring from office, and preventing the appellants from having this court determine the constitutionality of the statute in question, that the Stock Yards Company shall be mulcted in heavy damages, and pay large sums of money to various parties for alleged overcharges, when, if Mr. Boyle had continued in office, and this court upon the hearing of the merits of this appeal, had concurred in the opinion of counsel for the appellants that the Kansas act is unconstitutional, such bond of October 28th, 1897, would be void, and no liability accrue thereon? We think not.

We therefore contend that the motion presented by us should be allowed, and that the appellants may be permitted to prosecute their appeal to effect.

Sufficient extracts from the transcript of the

record have been printed and are now on file with the clerk of this court, to enable this court to act understandingly upon our motion, without refering to the original record.

B. P. WAGGENER AND
ALBERT H. HORTON,

Attorneys for Charles U. Cotting and Francis Lee Higginson, Appellants.

No. 237. 48 F

FILED
JAN 19 1899
JAMES H. McKENNEY,
Clerk.

Brief of Waggener & Horton for Appts. (on mo. to abate)

Supreme Court of the United States.

Filed Jan. 19, 1899.

CHARLES U. COTTING, *Appellant*,

vs.

THE KANSAS CITY STOCK YARDS COMPANY, a Corporation, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON, and LOUIS C. BOYLE, as Atttorney-General of the State of Kansas, *Appellees*. } In Equity.

No. 237, October Term, 1898.

FRANCIS LEE HIGGINSON, *Appellant*,

vs.

THE KANSAS CITY STOCK YARDS COMPANY, a Corporation, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON, and LOUIS C. BOYLE, as Attorney-General of the State of Kansas, *Appellees*. } In Equity.

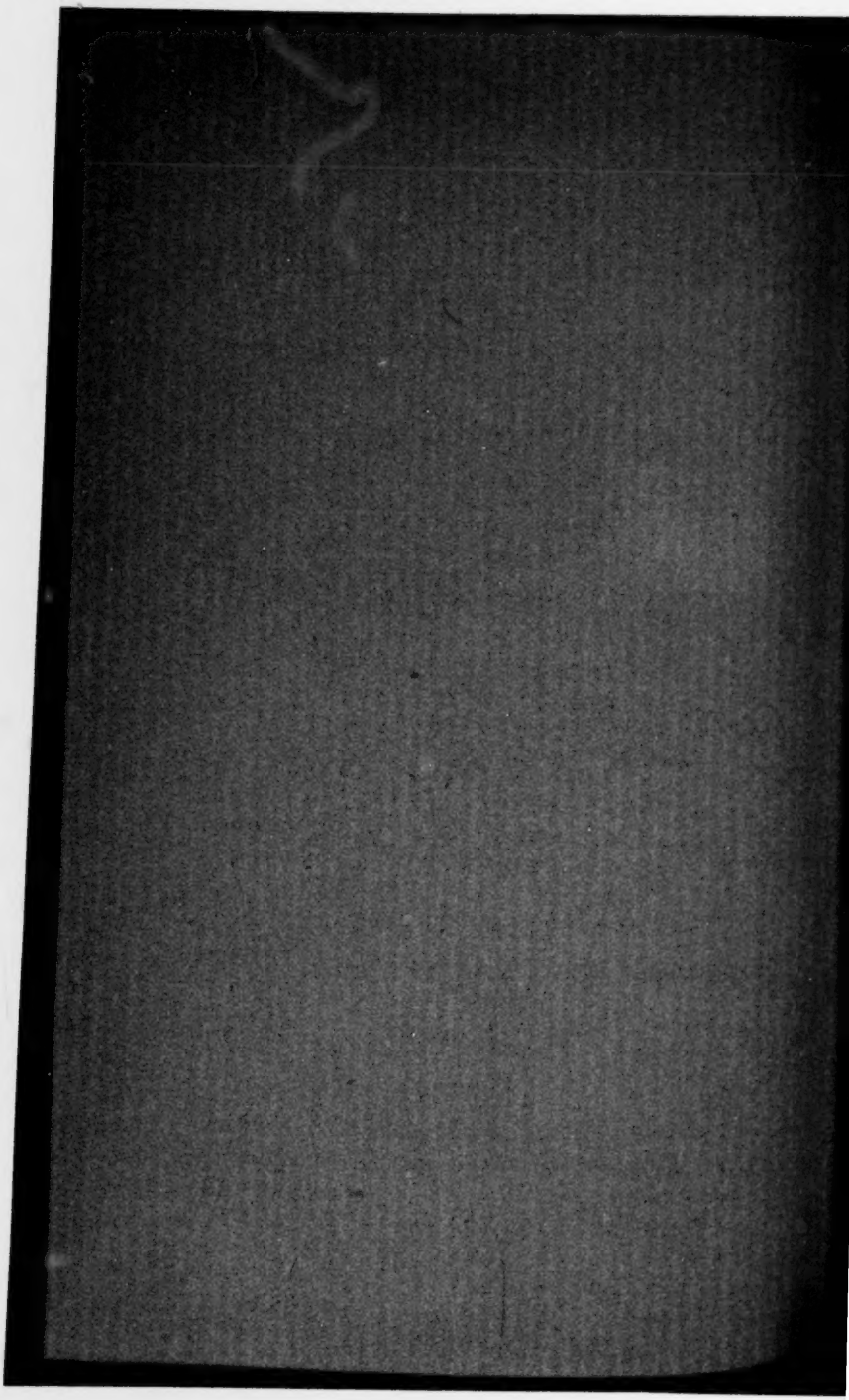
(Causes 7427 and 7488. U. S. C. C. Dist. of Kansas, First Division,—Consolidated.)

APPELLANTS' BRIEF,

IN ANSWER TO THE MOTION AND BRIEF OF LOUIS C. BOYLE TO ABATE THE SUITS.

B. P. WAGGENER AND
ALBERT H. HORTON,
Counsel for Charles U. Cotting and Francis Lee Higginson, Appellants.

BYRON S. ADAMS, PRINTER.



IN THE

Supreme Court of the United States.

CHARLES U. COTTING, *Appellant*, *vs.* THE KANSAS CITY STOCK YARDS COMPANY, a Corporation, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON, and LOUIS C. BOYLE, as Atttorney-General of the State of Kansas, *Appellees.*	In Equity. No. 237, October Term, 1898.
FRANCIS LEE HIGGINSON, *Appellant*, *vs.* THE KANSAS CITY STOCK YARDS COMPANY, a Corporation, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON, and LOUIS C. BOYLE, as Attorney-General of the State of Kansas, *Appellees.*	In Equity.

(Causes 7427 and 7453, U. S. C. C. Dist. of Kansas, First Division,—Consolidated.)

APPELLANTS' BRIEF,

IN ANSWER TO THE MOTION AND BRIEF OF LOUIS C. BOYLE TO ABATE THE SUITS.

I.

STATEMENT.

On Monday, January 16, 1899, with the consent of A. A. Godard, as Attorney-General of the State of Kansas, and of all other parties interested, there was submitted to this Court the motion of the appellants to have Hon. A. A.

Godard, as Attorney-General of the State of Kansas and the successor of Louis C. Boyle, substituted as a party in the place of Louis C. Boyle, the former Attorney-General of said State.

On January 17, 1899, Louis C. Boyle, in his individual capacity, submitted to this Court his motion to abate and dismiss the appeal pending in this Court. This appeal is being prosecuted by Cotting and Higginson, complainants below.

The brief which we filed in support of our motion for Hon. A. A. Godard, as Attorney-General of the State of Kansas, to be substituted in the place of Louis C. Boyle, the former Attorney-General of said State, or to have the appeal proceed through all its stages in this Court on the part of the office of the Attorney-General of the State of Kansas in the same manner in which it was commenced, but under the charge and control of Hon. A. A. Godard, the present Attorney-General of said State, is a full and sufficient answer to the brief of Louis C. Boyle, filed in support of his motion to abate the suits and to dismiss the appeal. But we now add a few additional remarks.

It appears from the affidavit of Louis C. Boyle, on pages 8 and 9 of his brief, that on January 9, 1899, Hon. A. A. Godard became and is now the duly-qualified and acting Attorney-General of the State of Kansas, and that on said January 9th, Mr. Boyle retired from the office of Attorney-General of the State of Kansas and " is not now the Attorney-General of the State of Kansas either *de jure* or *de facto*, but that Hon. A. A. Godard is the Attorney-General of the State of Kansas *de jure* and is duly acting as such officer."

It also appears from the motion of Louis C. Boyle to abate the suits, and from his brief filed in support thereof, that the signature thereto is " L. C. Boyle," not the Attorney-General of the State of Kansas. On the cover of his

brief the names are "David Martin, L. C. Boyle." His brief is signed "L. C. Boyle, David Martin of Counsel." Neither the motion to abate, nor the brief filed in support thereof purports to be made by any officer of the State of Kansas, nor any one connected with the office of the Attorney-General, and it is expressely shown that the motion and brief are not filed "in behalf of the office of the Attorney-General of the State of Kansas." Mr. Boyle in his individual capacity, and not as Attorney-General, comes into this Court after he has retired from office, and, without the consent of the present Attorney-General of the State of Kansas, and prays this Court to abate the suits and dismiss the appeal solely on account of his retirement from his office.

II.

AS HON. A. A. GODARD, THE PRESENT ATTORNEY-GENERAL OF THE STATE OF KANSAS, AND THE SUCCESSOR OF LOUIS C. BOYLE, IS CHARGED WITH THE SAME DUTIES UNDER THE KANSAS ACT OF MARCH 3, 1897, COMPLAINED OF BY THE APPELLANTS, A CHANGE IN THE INCUMBENT OF THE OFFICE OF ATTORNEY-GENERAL, FROM BOYLE TO GODARD, PENDING THE APPEAL IN THIS COURT, DOES NOT ABATE THE SUITS OR APPEAL.

We have referred in our brief upon our motion for substitution to the cases of *Bowden vs. Johnson*, 107 U. S., 251-264; *Thompson vs. The United States*, 103 U. S. (13 Otto.), 480-484; *Gates vs. Goodloe*, 101 U. S., 612, and other similar ones. See, also, Sec. 954 *et sub.* Rev. Stat. (2 Ed.) 1878.

The decisions cited in our brief upon our motion, as we understand, clearly decided that where the successor of an officer is charged by the statute with the same duties, a change in the incumbent of the office pending the suit does not abate the suit or make it necessary to begin *de novo*.

It was observed in *McDuff vs. Beauchamp*, 50 Miss., 531-537, "that it was insisted that the suit abated by the expiration of Howard's term of office and that it was error to substitute Beauchamp his successor."

* * * * * * *

"We know of no statute applicable to this state of facts. We believe, however, that the practice has long prevailed in this State to allow a successor in office to prosecute a suit instituted by his predecessor."

In *Railway vs. Martin*, 53 Ohio State, 386–402, cited in our brief upon our motion to substitute, it was remarked "the action was commenced against John R. Martin, then County Treasurer, and before the case came into the Circuit Court or this Court, his term of office had expired and his successor had been elected and qualified and had been inducted into office. The question is, that the proceedings in error in the Circuit Court and in this Court, should have been against the successor and not against John R. Martin, who was no longer Treasurer. The point is not well taken.

The action in such cases is regarded as against the Treasurer, whoever he may be, and it may proceed through all its stages in all courts in the same manner in which it was commenced, or if desired, the new Treasurer may on motion be substituted in the place of the retiring one and this is certainly the better practice.

The Treasurer in office should, as one of his official duties, take charge of and look after the actions against or in behalf of his office, but a failure to substitute the new Treasurer does not have the effect to abate the action nor cause its dismissal on motion."

Louis C. Boyle has no interest whatever in the pending suit or appeal. He is out of office. The suits filed in the Court below were against him as Attorney General of the State of Kansas, *not individually or for any personal delin-*

quency. (Extracts, pp. 3-24.) (Extracts, pp. 26-47.) The Kansas Act of March 3, 1897, complained of, will be found on pages 22-23 and 46-47 of Extracts.

It is not correct, as alleged in the brief of Louis C. Boyle, that he has any interest in the suits or appeal by reason of the costs taxed therein. All costs in the Court below have been paid and all costs in this Court have been advanced by the appellants. The judgment for costs was not in favor of Louis C. Boyle personally, but as Attorney-General of the State of Kansas; as before stated, all of these costs have been satisfied.

Really, the contention in this Court, by Mr. Boyle, is as to who shall control, in behalf of the office of Attorney-General of the State of Kansas, the defence to the appeal of the appellants. Louis C. Boyle is out of office and has no right or authority to look after this appeal in behalf of the Attorney-General's office. It is the duty of the Hon. A. A. Godard, as Attorney-General of said State, to look after, on behalf of his office, this appeal, and to take exclusive charge and control thereof. Louis C. Boyle is a stranger now to this appeal and the proceedings pending in this Court. We contend he has no authority, as he is out of office and has no interest in the suits or appeal, to file in this Court any motion or brief, or to appear further in this matter. We believe we have a right to have his motion to abate and his brief filed in support thereof stricken from the files of this Court.

In our view, L. C. Boyle, being out of office and having no interest in the suits or appeal, has no further standing in this Court to make any motion in the present or future progress of this case. Indeed, as he signs his name individually at the end of his brief, it is apparent that he does not claim to appear for the office of Attorney-General of the State of Kansas, nor for any party or officer interested in

the suits or the appeal. Therefore, we contend, that Hon. A. A. Godard, as Attorney-General of the State of Kansas, ought to be made a party to this appeal, and whether made such a party or not, that in order the appellants may understand the present status of all the appellees, this Court should declare who has the right to represent and appear for the office of Attorney-General of the State of Kansas, and, also, that this Court should declare that Hon. A. A. Godard, as such Attorney-General has, in behalf of his office, the exclusive charge and control of said suits and the appeal.

We remind the Court that Hon. A. A. Godard was present by his counsel, Ex-Judge D. M. Valentine, when the motion to substitute was submitted to the Court, and that he stated to this Court that the Attorney-General desired a hearing and decision of the appeal upon the merits. This was in effect a withdrawal of Mr. Boyle's motion to abate, if the present Attorney-General of Kansas has the power to appear in this appeal in behalf of his office. The office of the Attorney-General of the State of Kansas, the shippers and stock-raisers in that State are interested in having the law questions involved in this appeal decided. The appellants, having vast property rights involved in this appeal, are also interested in having a full hearing of the appeal on the merits thereof. No person, party or officer having any interest in the appeal desires an abatement thereof. But Mr. Boyle, being out of office, wants the appeal abated or dismissed for some whim or caprice of his own. Ex-Judge Valentine also stated that after these motions were decided he wanted the appeal continued over the term. We agreed to this. If this Court shall decide that Hon. A. A. Godard, as Attorney-General of the State of Kansas, shall be substituted in the place of Louis C. Boyle, the old Attorney-General, or if Hon. A. A. Godard,

as Attorney-General of the State of Kansas, shall be held by this Court as the officer having charge and control, in behalf of his office, of the defense to the appeal and contention of appellants, then the appeal is to be continued over this October term of Court and until the next term thereof.

In any event, owing to the late submission of the various motions now before the Court for decision and the near approach of the call upon the docket of this appeal, the parties interested prefer for their convenience and a proper preparation for the hearing, a continuance of the appeal after such motions are passed upon.

B. P. WAGGENER AND
ALBERT H. HORTON,
Attorneys for Charles U. Cotting and Francis Lee Higginson, Appellants.

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No. 43 #1

Brief of Waggener & Horton, Co. Appts.

Office Supreme Court U. S.
FILED
OCT 7 1899
JAMES H. McKENNEY
Clerk.

Filed Oct. 7, 1899.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

CHARLES U. COTTING AND FRANCIS LEE HIGGINSON, *Appellants*,

vs.

A. A. GODARD, AS ATTORNEY-GENERAL OF THE STATE OF KANSAS, AND THE KANSAS CITY STOCK YARDS COMPANY, *et al.*, *Appellees*.

No. 43.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

STATEMENT OF CASE, BRIEF, AND ARGUMENT FOR APPELLANTS.

B. P. WAGGENER AND
ALBERT H. HORTON,
Of Counsel for Appellants.

CRANE & CO., TOPEKA.

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(The pages of the printed record are indicated by Roman figures, and the pages of the original record on file by Arabic figures.)

STATEMENT OF CASE.

This is an appeal by the complainants from a decree of the Circuit Court of the United States for the District of Kansas, rendered on October 28, 1897, dismissing the bills of complainants, who are stockholders of the Kansas City Stock Yards Company. They sued on behalf of themselves and all other stockholders to perpetually enjoin the Attorney-General of the

State of Kansas from enforcing against the Kansas City Stock Yards Company, its officers and employés, by criminal prosecution or otherwise, an act of the Legislature of the State of Kansas approved March 3, 1897, known as "Committee Substitute for House Bill No. 87," and being "An Act defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating all charges thereof, and removing the restrictions in the trade of dead animals, and prescribing penalties for violations of this act." (Record, 18-20, 41-42.) A copy of the act is hereto attached, marked "Exhibit A." This is published in the Session Laws of Kansas for 1897 as chapter 240. *Under section 8 of said act, the Attorney-General of Kansas is charged with the special duty of enforcing the provisions of said act, as follows: "It is hereby made the duty of the Attorney-General to prosecute all violations of this act."*

The bill of Charles U. Cotting was filed on March 13, 1897. (R. 1-20.)

The bill of Francis Lee Higginson was filed March 26, 1897. (R. 23-42.)

The bills alleged that the act of March 3d, 1897, relating to stock yards, is repugnant to the Fourteenth Constitutional Amendment, as depriving the Stock Yards Company of its property without due process of law, and denying to it the equal protection of the law, and to section 8, article 1 of the Constitution of the United States, ordaining that Congress shall have power to regulate commerce among the several States, and the

provisions of the acts of Congress establishing a bureau of animal industry, and the various rules and regulations of the Department of Agriculture made and promulgated in accordance with the provisions of acts of Congress.

At the time of filing the bills, the court granted orders that the defendant corporation and its officers and agents be temporarily restrained from obeying, observing or putting into force the maximum rates and prices specified in the act of March 3, 1897; and Louis C. Boyle, as Attorney-General of the State of Kansas, was also restrained from enforcing the provisions of said act against the said defendant corporation, its officers, servants and employés, and from arresting or criminally prosecuting in the courts of the State or otherwise the said defendant corporation, its officers, servants and employés, on account of any non-observance or disobedience by them of the said act or any of the provisions thereof. (R. 22-23, 43-44.)

The suits were consolidated on April 2, 1897. (R. 50-51.)

On April 12, 1897, George W. Clark, of Topeka, Kansas, was appointed Special Master, with power to take and report the testimony for the hearing of the application for a preliminary injunction. (R. 52-53.)

See *Cotting v. Kansas City Stock Yards Co. et al.*, 79 Fed. 679-684.

On July 21, 1897, the order of the court theretofore granted, "restraining and enjoining the Kansas City Stock Yards Company, its officers and agents, from putting into force the charges and rates prescribed by the act of the Legislature of the State of Kansas approved March 3, 1897, relating to stock yards, and

also restraining and enjoining L. C. Boyle, as Attorney-General of the State of Kansas, from enforcing the provisions of said act against the Kansas City Stock Yards Company, its officers and agents," was continued in full force, pending further proceedings in the court. (R. 53-54.)

The Kansas City Stock Yards Company, of which Cotting and Higginson are, with many others, stockholders, filed its charter in the office of the Secretary of State of the State of Kansas, on December 10, 1883. (R. 61-62, *1557-8.*) The purposes for which the corporation was formed were, "the construction, maintenance and operation of union stock yards, and of such buildings, hotels, railways and switches as might be necessary for such purpose." (R. 59.) The county of Wyandotte in the State of Kansas, and the county of Jackson in the State of Missouri, were designated in the charter as the places where the business of the corporation was to be transacted. A copy of which charter is hereto attached, marked "Exhibit B." For the sake of brevity, the Kansas City Stock Yards Company will be called the Stock Yards Company. At the time of filing its charter, the amount of capital stock of the corporation was $2,500,000, the shares of stock being twenty-five thousand, of the par value of $100 each. (R. 61-62.) The corporation commenced active operations on January 1, 1884. It then acquired and purchased property, tangible and intangible, of the actual value in money of $1,990,000, and issued therefor 19,900 shares of its capital stock, of the par value of $100 each. (R. 212, 216, 230-231.) The stock issued was quoted in the

stock markets of Boston, Mass., and Kansas City, Mo., at that time above par.

Subsequently the corporation increased its capital stock, as authorized by the statutes of Kansas, to $7,500,000, and certificates thereof were properly filed in the office of the Secretary of State of Kansas on July 22, 1887, and on February 16, 1894. (R. 61-62.) See Exhibits "C" and "D."

On December 31, 1896, there had been issued capital stock then and now outstanding to the amount, at par value, of $7,368,650. The market quotations of the stock of the corporation in Boston, Mass., and in Kansas City, Mo., ranged in the years 1896 and 1897, prior to March of that year, from $131 to $141. (R. 62.)

The Stock Yards Company is a private corporation. In Kansas, corporations are created only under general laws. The Legislature cannot pass any special act conferring corporate powers. (Art. 12, Constitution of Kansas.) When the Stock Yards Company was incorporated, and at the time of the trial, any voluntary association of five or more persons could be incorporated by filing a charter in the office of the Secretary of State of the State of Kansas, and paying $2 for recording the same, for the purpose of constructing, maintaining and operating stock yards, and the erection of such buildings, hotels, railways and switches as might be necessary for that purpose. (Chap. 23, Vol. 1, Gen. Stat. of Kan. of 1889, concerning private corporations, pp. 367-371; chap. 66, Vol. 1, Gen. Stat. of Kan. of 1897, pp. 688-692.) The existence of the corporation

dates from the time of the filing of its charter. (Par. 1166, Vol. 1, Gen. Stat. of Kan. 1889, p. 371; sec. 12, chap. 66, Vol. 1, Gen. Stat. of Kan. of 1897, p. 692.)

The company has no legal monopoly, no power to exercise the right of eminent domain, no special privileges conferred by the State. The business is open to all comers. The State has simply authorized the company to transact the business described in its charter. That and nothing more.

Charles U. Cotting, one of the complainants, at the time of filing his bill, and prior thereto, was a stockholder in the corporation, owning 250 shares of stock. Francis Lee Higginson, another complainant, at the time of filing his bill was a stockholder, owning 296 shares of stock. The largest part of the earnings of the corporation in 1896 was derived from the per-capita charges upon live stock sold in the yards, which were as follows: Cattle, twenty-five cents; calves, ten cents; hogs, eight cents; and sheep, five cents. These charges are identical with those which prevail at the yards at St. Louis, East St. Louis, Omaha, Denver, Pueblo, Cincinnati, and Sioux City; and about the same as at Chicago, Fort Worth, St. Paul, Louisville and Indianapolis. Feed is sold at substantially the same prices in all other stock yards in the country. All of these stock yards are operated in the same manner as those at Kansas City, and there is and has been for a long time an active and growing competition among their owners to attract and secure to each the shipment of live stock from competitive territory.

Finding No. 39, Report of Master. (R. 74.)

No yardage charge is made unless the stock is sold in the yards, and no matter how often the stock may change, or how long it may remain in the yards, there is but one yardage charge.

Finding No. 18, Report of Master. (R. 64.)

For the per-capita charge stated, the company furnishes whatever yard or pen space is required by the owner to exhibit his stock to the best advantage for sale, he having the privilege of dividing a car-load into as many different lots and using as many pens as he desires. It furnishes standard scales, upon which it weighs the live stock in the yards whenever and in such quantities as the owners desire. In 1896 there was an average of more than 500 drafts of live stock in each day. It records all transfers from seller to buyer, and gives certificates of weights upon which all sales are settled.

Finding No. 19, Report of Master. (R. 65.)

The company includes in its yardage charges facilities for the dipping of sheep, as all sheep pass through a disinfecting appliance known as a sheep-dip, in accordance with the rules of the Department of Agriculture.

The company also furnishes to shippers and owners of stock in its yards a valuable public market for the exposure of live stock for sale.

Speaking generally, the word yardage includes all services from the time the stock is unloaded to the time it is sold or reshipped, including driving, yarding, watering, weighing (in case the stock is sold), and responsibility for safety, the privilege of the market in the yards, and other valuable services.

Another source of income is the sale of feed, including the services performed by the company in connection therewith. For the convenience of owners of stock, the company keeps on hand large stores of hay and grain. These stores are all maintained in Missouri, where they are sold upon the written order of such owner, and where they are paid for by him. Upon the receipt of his order, hay and grain called for thereby is delivered by the company's employés from its stores to the pens where such owner's stock is yarded. The amount so called for being inconsiderable for each head of stock, exact accounts are necessarily kept by the company of all of these small orders, and the care and labor of distributing the feed is very large. All these services are included in the charges for the hay and grain.

Findings Nos. 20 and 21, Report of Master. (R. 65.)

The charge for such feed and the services connected therewith is $1 per cwt. for hay, and $1 per bushel for corn. The charge for feed, water and services is identical with that made in the stock yards at Omaha, St. Louis, East St. Louis, and Denver. At Pueblo, Chicago and St. Louis the charge at the stock yards for timothy hay is $1.50 per cwt.

Finding No. 20, Report of Master. (R. 65.)

The act of March 3d, 1897, provides:

"SEC. 4. It shall be unlawful for the owners, proprietors, or the employés of the owners or proprietors of any such public stock yards within this State, to charge for driving, yarding, watering and weighing of stock, greater prices than the following: For driving, yarding, watering and weighing of cattle, fifteen cents per head; calves, eight cents per head; hogs, six

cents per head; sheep, four cents per head; and there shall be but one yardage charged.

"SEC. 5. It shall be unlawful for the owner, owners, proprietors, or their employés, of any such stock yards within this State, to sell and deliver at the rate of less than two thousand pounds for a ton of hay, or any part thereof, the same to be of good quality, or to charge for or to sell the same at more than one hundred per cent. above the average market price or value of such hay upon the markets of the towns or cities wherein such stock yards are located, upon the day preceding such sale and delivery; and it shall also be unlawful for any such owners, or proprietors or employés, to sell and deliver less than seventy pounds of corn in the ear for a bushel, or less than fifty-six pounds of shelled corn for a bushel, or to charge for or to sell the same at more than one hundred per cent. above the average market price or value of such ear corn or shelled corn on the markets of the towns or cities wherein said stock yards are located, on the day next preceding such sale and delivery. All feed not above named shall be sold for no greater per cent. of profit than hereinbefore provided."

The act reduces the charge for yardage and all the services connected therewith from 25 cents to 15 cents per head of cattle, from 10 cents to 8 cents per head of calves, from 8 cents to 6 cents per head of hogs, and from 5 cents to 4 cents per head of sheep; and for feed from $1 per bushel for corn to 40 cents, and from $1 per cwt. of hay to 70 cents. These reductions amount to over $300,000 per annum.

It appears from the testimony and the report of the Master that the shipments of live stock received at these yards originate from various States and Territories. The following tabulated statement gives complete information of the sources and the numbers of stock received at the yards during the year 1896:

State or Territory.	*Cattle.*	*Calves.*	*Hogs.*	*Sheep.*	*Horses and Mules.*	*Total.*
Kansas	863,430	33,133	1,625,848	294,997	32,188	2,849,596
Texas.....	217,257	19,036	12,842	145,555	45	394,735
Missouri	204,271	6,908	667,248	109,521	20,525	1,008,473
Indian Ty.....	188,918	20,247	68,375	2,994	27	280,511
Oklahoma.....	78,720	6,673	87,579	5,769	122	178,863
Colorado.....	44,746	2,737	582	90,866	782	139,715
New Mexico ..	35,876	2,988	494	88,941	.....	128,299
Nebraska	28,178	1,023	136,394	31,527	1,863	198,985
Iowa.....	11,451	2,651	232	49	590	14,973
Minnesota	9,909	2,879	42	.....	2	12,832
Old Mexico ...	6,512	.....	.....	3,120	.....	9,632
Utah.....	5,552	15	.....	162,531	176	168,274
Arkansas.....	4,327	984	5,143	4,117	1	14,572
Idaho.....	4,304	151	490	6,910	99	11,954
Arizona.....	2,808	.....	.....	33,638	65	36,511
Wyoming	2,077	252	.....	3,479	641	6,429
Oregon.....	1,410	1	.....	7,350	293	9,234
Illinois	694	11	.....	63	56	824
Montana	491	.....	.....	.....	91	582
California.....	293	.....	.....	225	29	547
Wisconsin	3,306	497	308	1,344	252	5,705
Total.....	1,714,532	100,168	2,605,575	993,126	54,847	5,471,246

—(R. 863.)

Finding No. 4, Report of Master. (R. 60.)

The Stock Yards Company, since it became the owner of its yards, has secured to locate in the immediate vicinity of its yards, by its energetic, persistent and continued efforts, and the payment of $697,377.10, great beef, pork and mutton packing establishments, with a large capacity for the slaughtering of live stock, amounting in 1896 to 894,537 cattle, 58,331 calves, 2,263,143 hogs and 685,727 sheep, aggregating 3,896,738 head of stock.

Finding No. 5, Report of Master. (R. 60-61.)

If the live stock shipped from the State of Kansas to, and sold on the Kansas City stock yards market during the year 1896 had been shipped by the owners thereof to Chicago, and

sold there, such owners would have realized from the sale of such live stock $1,500,000 less than they actually did receive by selling the live stock at the market furnished at the Kansas City stock yards by that company.

Finding No. 39, Report of Master. (R. 74.)

The salaries paid annually to the officers of the Stock Yards Company are as follows:

President	$2,500
Vice-President and General Manager	10,000
Assistant General Manager	5,400
Treasurer	5,000
General Superintendent	5,000
Attorneys	3,250
Cashier	2,700
Superintendent of Construction	2,000
Total	$35,850

—(R. 813.)

The Master reported, "for the services rendered by the officers, employés and servants of the Stock Yards Company, considering their skill, ability, energy and fitness for the performance of such services, the compensation paid to them by the company is and has been fair and reasonable." (R. 74.)

The Master also reported that "the affairs of said company have, from the standpoint of the stockholders therein, been wisely, efficiently and economically administered, and its operating expenses and cost of maintenance have been necessary to properly transact its business and successfully carry out the purposes for which it was incorporated." (R. 74.)

The only criticism the Master made of the management of the company were the expenditures in the purchase of seven small tracts of land, designated on "Exhibit Z" as "e," and for lands and improvements in the horse and mule department. Yet the uncontradicted testimony shows that the purchase by the company of the small tracts of land was in the opinion of those most competent to judge a wise provision for the establishment of closer business connections with the largest patron of the Stock Yards Company, and for the purpose of establishing more expeditious facilities for the rapid and convenient handling of stock received at the stock yards over the Union Pacific and Missouri Pacific railroads. It also appears from the undisputed testimony that the horse and mule department was an absolutely essential part of said business from the necessities of stock-raisers and the competition of other stock yards. (R. 74, 846-847.)

No more was expended upon the horse and mule department than was reasonably necessary therefor. (R. 847.)

Geographically, the stock yards are situated partially upon a peninsula formed by the confluence of the Kansas and Missouri rivers, and on the east and west banks of the Kansas in Wyandotte county, Kansas, and south of the Missouri, in Jackson county, Missouri. The stock yards are divided into several divisions. On the west bank of the Kansas river is the quarantine or southern-cattle division, consisting of about twenty acres, divided into cattle-pens. This is the portion of the yards devoted to the handling of stock originating south of the south

line of Kansas. It is called the quarantine division because all cattle from that region are, under the acts of Congress and the regulations of the Department of Agriculture, subjected to inspection and quarantine as hereafter explained. Practically, all of the remaining portions of the yards are on the east bank of the Kansas. Directly across the river from the quarantine division is that part of the yards known as the main yards, consisting of about eighty-two acres, approximately sixty-five of which are devoted to the care of live stock, principally cattle; the remaining area being used for shipping facilities, the horse and mule department, the storage of feed, and general office buildings and similar conveniences. These eighty-two acres lie in almost equal proportions in the States of Kansas and Missouri; the jurisdictional line between the two States almost exactly dividing these yards. The office building known as the Stock Exchange Building is partly in Missouri and partly in Kansas. The half of the main yards which is situated in Missouri is devoted by the Stock Yards Company to the handling of cattle, the storage and sale of feed, the care and handling of horses and mules, and the shipment of live stock sold at the yards to points in other States. The half of the main yards which is in Kansas is devoted largely to the unloading of live stock received at the yards, and to the yarding and weighing of cattle and hogs. It is separated by the terminal yards of the Missouri Pacific and Union Pacific railroads, from the sheep and hog division; which consists of about thirty-two acres, upon which are pens for hogs and sheep. The relative capacity of

the departments of the yards is shown by the receipts of cattle during the year 1896. In that year, in the quarantine division about 300,000 head of cattle were cared for; in the Kansas portion of the main yards, about 500,000 head were yarded; and the remainder, about 900,000 head, were yarded in the portion of the main yards situated in the State of Missouri. In addition to the cattle referred to, aggregating in round numbers 1,700,000, there were also yarded nearly 4,000,000 of horses, mules, calves, hogs, and sheep.

For the purpose of facilitating the rapid handling of live stock, the Stock Yards Company has, within the limits of its property, ten standard-gauge railroad tracks, connected outside of the yards at a point within the State of Missouri with the tracks of eleven different railroad companies. The railroad tracks constructed and owned by the Stock Yards Company are conveniently situated with reference to its unloading-chutes. The Stock Yards Company has no motive power; the railroad companies running their trains, engines and cars over the tracks in the yards. All of the departments are equipped with suitable structures for the sale of live stock, and for its movement to convenient places of sale, and for its rapid disposition after sale. These structures consist of pens, alleys, viaducts, tunnels, and a steel stock bridge spanning the Kansas river. The viaducts are overhead driveways, and with their various ramifications are about two and one-half miles in aggregate length. The surface driveways are about fifteen miles in total length. These driveways, viaducts, bridge and tunnels connect with each other,

and are the means by which communication is had from one of the departments of the yards to the others. The entire area owned by the company amounts approximately to one hundred thirty-nine acres.

Seven of the Stock Yards Company's railroad tracks begin in Missouri near the State line, on the south boundary of the yards, and run thence to the company's unloading-chutes, which are in Kansas, at which places the stock is unloaded into the yards. Another track runs to the shipping division, and is used for feed brought by the company into the yards. The remaining two tracks are used for shipping stock out, and run along the chutes from which the stock is reloaded. The feed and shipping tracks are all in Missouri. The aggregate length of all these tracks is four miles.

Live stock arriving at the yards is disposed of as follows: Quarantine cattle are delivered by the railroads from their tracks at chutes at the quarantine division, where the same remain under the custody and supervision of the United States Government live-stock inspector, resident at the yards. After the stock has been passed by these inspectors, it is sold in the quarantine division, and driven to the packing-houses for slaughter or the shipping-chutes. The method of dealing with this kind of cattle will be treated more in detail hereafter.

Stock entering the yards over the seven tracks above mentioned, after being unloaded by the company at the chutes, is distributed in pens under the personal supervision and direction as to location of the agent of the shipper; some agents preferring

pens in Kansas, others, pens in Missouri;—such preference being exercised by the shipper, in order, according to his judgment, to display his property to the best advantage for sale, having regard to his customers and the particular character of the stock in any case. All cattle are sold in the pens where they have been yarded.

Cattle, including calves, purchased at the yards for shipment to other States, are driven by the company to the shipping division and loaded into the cars of the railroad company designated in the bill of lading on which they were originally routed. Cattle sold at the yards for immediate slaughter are driven by the packers to their establishments. Most of the hogs come into the yards over the seven tracks heretofore mentioned, and are yarded and sold in Kansas for immediate slaughter. The same is true of sheep, except some considerable part is sold for shipment to other States.

When the negotiations of sales of stock are completed, the stock is weighed upon the company's scales, and the sale consummated upon the certificates of weights furnished by the company. The company's charges for yardage accrue before any sale is consummated.

The report of the Special Master was made and filed August 24th, 1897. (R. 57-80.) The Master reported the total receipts of the Stock Yards Company for 1896, the year prior to the enactment of the law complained of, were $1,023,870.20. The Master further reported that if the rates fixed by the act of March 3d, 1897, had been applied to the business of the com-

pany for 1896, the net income would have been reduced $300,-651.70 for that year alone. (R. 80.)

The parties stipulated that the final hearing of said case should commence on October 18th, 1897. (R. 874-875.) Before the hearing, the Attorney-General filed the following statement and admission:

"That there was no collusion between the complainant in the above entitled suits and the defendant the Kansas City Stock Yards Company, or any of its officers, directors or attorneys, solicitors or counsel, in respect to the bringing or prosecution of said bills or either of them, and that the said bills were not, when the same were exhibited, and are not collusive to confer upon a court of the United States jurisdiction of the said causes." (R. 874-875.)

Subsequently, the answers and replications were filed. (R. 877-938.)

The cause came on to be heard on October 18th, 1897, upon the pleadings and proof, in accordance with the stipulation of the parties. (R. 939-940, 874-875.) The argument of the cause was concluded on October 20th, 1897. (R. 940.) The court took the same under advisement, and on October 28th, 1897, the opinion of the court was handed down, and a final decree entered dismissing the bills of complainants.

The decree shows by its recitals that all the parties to the suit were in court at the rendition of said decree, and that the complainants "duly excepted at the time in open court to the order and decree of said court dismissing said bills of complaint and each of them, and thereon in due form prayed for an appeal,

which is duly allowed." (R. 947-948.) Thereafter the complainants perfected their appeal to this court, and all of the defendants entered their appearance thereto in this court.

It is conceded that the structures, buildings, and all other improvements, separate from the real estate are of the reasonable value of $1,480,000; the Master appraised certain personal property, consisting of hay, grain, horses, wagons, office furniture, etc., at $307,377.25, and the land, "divested of all improvements," at $3,600,626, aggregating $5,388,003.25, as the reasonable value of the tangible property of the company, *but it will be noticed from his report that he valued the naked land, then valued the improvements separate and apart therefrom, and then valued the personal property separate and apart from the improvements and the land. He did not value the property of the Stock Yards Company used as a unit, taking into consideration the use to which it is put and all the elements making up its aggregate value.* He did not include in the reasonable value of the property the proportionate part of the value resulting from the combination of the means by which the Stock Yards Company's business is carried on,—a value existing to an appreciable extent throughout the entire domain of its operation.

Findings of Master, Nos. 43-47. (R. 77, 851-856.)

It is the contention of the complainants that the valuation of the property by the Master was based upon the evidence of incompetent experts, and upon insufficient and irrelevant testimony. Foster, J., in the opinion handed down by him, added

$126,140 to the valuation found by the Master, making the reasonable value $5,614,143.

Cotting v. Stock Yards Co., 82 Fed. 839-849.

THAYER, J., accepted the value of the property as fixed by the Master. He observed:

"Conceding, as we must, that the legislation complained of was radical in its nature and effect, that it reduced the company's income about 50 per cent., and that it prevents it from realizing on the capital invested in its plant such a per cent. as is ordinarily realized on capital invested in other mercantile and business enterprises, still the court is not prepared to hold that the statute is confiscatory, and that it deprives the company of its property without due process of law.

. . . . . .

"The great importance of the questions involved in these cases will doubtless occasion an appeal to the Supreme Court of the United States, where they will be finally settled and determined. If, on such appeal, the Kansas statute complained of should be adjudged invalid for any reason, and in the meantime the statutory schedule of rates should be enforced, the Stock Yards Company would sustain a great and irreparable loss. Under such circumstances, as was said, in substance, by the Supreme Court in *Hovey v. McDonald*, 109 U. S. 150, 161, 3 Sup. Ct. Rep. 136, it is the right and duty of the trial court to maintain if possible, the *status quo* pending an appeal, if the questions at issue are involved in doubt; and equity rule 93 was enacted in recognition of that right. The court is of the opinion that the cases at bar are of such moment, and the questions at issue so balanced with doubt, as to justify and require an exercise of the power in question." (R. 945-946.)

Cotting v. Stock Yards Co., 82 Fed. 850-857.

THAYER, J., in his opinion followed the findings of the Master as to the net income of the Stock Yards Company for 1896, and

did not consider the written stipulation of the parties (R. 82, 89-91), of the disbursements *"for operation, maintenance and extensions of improvements,"* by the Stock Yards Company in that year. (R. 82, 89-91.)

According to this stipulation the gross income of the Stock Yards Company in 1896 was $1,023,870.20, and there was disbursed during the same time *"for operation, maintenance and extensions of improvements" $537,643.70.* (R. 82, 89-91.) The net income of the Stock Yards Company, therefore, for the year 1896 amounted to the sum of $486,226.50. Out of this, the company paid a dividend of six per cent. upon its stock, amounting to $429,160.50, leaving as surplus, after paying the dividend, from the earnings of the stock yards for the year of 1896 the sum of $57,066. *There was no capital stock of the company issued in 1896 to pay "for operation, or maintenance or the extensions of improvements" of the company.* (R. 82.) *No bonds of the company were then issued, and none have ever been issued.* Therefore, under the stipulation of the parties, the total disbursements for 1896, of $537,643.70, (which include $169,584.65 *"for operation, maintenance and extensions of improvements in 1896,"*) is properly chargeable to earnings as operating expenses or cost of maintenance. The net income, therefore, of the Stock Yards Company for 1896, instead of being, as reported by the Master, $646,588.73, was only $486,226.50, as stated above.

If the rates prescribed by the Kansas statute for yarding and feeding stock had been in force during the year 1896, the net

income of the Stock Yards Company from all sources, whether regulated by the statute or not, would have been reduced for the year to the extent of $300,651.77, leaving a net income of $185,574.73 only; thereby destroying or confiscating to an unconstitutional degree the income or compensation for the use of the stock yards property. The owners thereof would be deprived unjustly of their property without due process of law if the provisions of the act of March 3d were enforced.

The appellants contend that upon all of the competent testimony contained in the record, the whole property of the Stock Yards Company as a going concern is worth from nine million to ten million of dollars; that the reasonable value of the property of the company should be estimated as a unit,—as an entirety,—as a plant designed for a specific object; *that its value ought not to have been estimated by the Master or the court below in parts, but taken as a whole.* The testimony is that the reproduction of the plant at the present time would cost *"anywhere from eight to ten millions of dollars."* If the property of the Stock Yards Company is estimated at the market value of its stock, as quoted in the stock exchanges at Boston and Kansas City in January, 1897, the property of the company is of the reasonable value of $9,715,000. As before stated, the gross earnings in 1896 were $1,023,870.20. The running expenses for that year amounted to $368,059.05, leaving excess of gross income over running expenses of $655,810.15. *But under the written stipulation of the parties, showing disbursements for 1896 "for operation, maintenance and extensions of improve-*

* The gross income of the property used for stock-yards purposes only was, in 1896, $1,012,271.22, and the net income from that property, if the rates of 1897 were applied, would have been $176,322.31.

ments," $169,584.05 should be deducted, which shows a net income for 1896 of $486,226.50, applicable to dividends, which is about 5.78 per cent. upon the capital stock. (R. 82, 91.)

If the statutory rates prescribed by the act of 1897 had been in force in 1896, then the total net income would have been only ~~$185,574.73~~ *176,322.31, which is approximately 2.5 per cent. upon the stock.*

The act of March 3d, 1897, does not attempt to regulate all of the sources of income. The net income from the sources regulated is reduced a fraction over 75 per cent., so that in arriving at the proper result the entire net income should be considered as reduced 75 per cent., and the remainder treated as the true test of the act.

Applying this rule to the business of 1896, the entire net income so reduced would have been in that year $120,752.95, which is 1.5 per cent. on $8,000,000, and 1.2 per cent. on $10,000,000.

In Kansas, the legal rate of interest is six per cent. per annum, when no other rate of interest is agreed upon, but the parties to any written instrument may stipulate therein for interest receivable at a rate not exceeding ten per cent. per annum. (Vol. 2, Gen. Stat. 1897, ch. 116, p. 596.)

On January 9th, 1899, L. C. Boyle, formerly Attorney-General, retired from office, his term having then expired. On the same day, A. A. Godard, the newly elected Attorney-General, duly qualified as Attorney-General and entered upon the possession of his office and the performance of the duties thereof. As the suit brought in the court below was in its nature against the

office of Attorney-General and not against the person filling such office, the new Attorney-General was substituted by the order of this court as a defendant, and he has duly filed his appearance to the appeal.

As this is an appeal in an equity suit, the whole case is before the court for decision.

A SPECIFICATION OF THE ERRORS RELIED UPON.

The decree of the United States Circuit Court for the District of Kansas, rendered October 28th, 1897, is erroneous and against the just rights of the complainants and of each of them, for the following reasons:

First: Because the testimony shows that the necessary operation of the act of March 3, 1897, as applied to the Stock Yards Company and its property used for stock-yards purposes, would be to abridge the privileges and immunities of said company, (a citizen of the United States,) contrary to the provision of section 1 of the fourteenth amendment to the Constitution of the United States, and to abridge the privileges and immunities of the complainants as stockholders in said company.

Second: Because the testimony shows the Stock Yards Company, being a private corporation, was, prior to the enactment of the act of March 3, 1897, relating to stock yards, and complained of in the bills of complaint filed herein, in the unrestricted enjoyment of the use of private property, and that said act devoted the property of said corporation to a public use without providing any machinery by which the value of such use might or could be ascertained, and failed to provide any compensation for such taking of private property of the company for public use.

Third: Because the testimony shows that the necessary operation of the said act of March 3, 1897, if applied to the Stock Yards Company, would deprive the complainants herein and the said defendant Stock Yards Company and each of them of their property without due process of law, contrary to the provisions of section 1 of the fourteenth amendment of the Constitution of the United States.

. . . . . .

Fifth: Because the testimony shows that the act of March 3, 1897, complained of herein, was and is repugnant to the provisions of section 1 of the fourteenth amendment to the Constitution of the United States, which provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws."

Sixth: Because the court erroneously found and held in the said decree that the business of the Stock Yards Company was not in whole or in part interstate commerce, and that the property owned and used by said company was not an instrument of such commerce.

Seventh: Because the testimony shows that the act of March 3, 1897, complained of herein, was and is repugnant to that part of section 8 of article 1 of the Constitution of the United States which provides that "The Congress shall have power to regulate commerce with foreign nations and among the several States."

Eighth: Because the testimony shows that the act of March 3, 1897, complained of herein, if applicable to the Stock Yards Company or to the business in which it is engaged, was and is

repugnant to sections 4386, 4387, 4388, 4389 and 4390 of the Revised Statutes of the United States.

Ninth: Because the testimony shows that the act of March 3, 1897, as applied to the Kansas City Stock Yards Company and to the business in which it is engaged, was and is repugnant to an act entitled "An act to regulate commerce," enacted by the Congress of the United States, approved February 4, 1887.

Tenth: Because the testimony shows that the act of March 3, 1897, complained of herein, if applied to the Stock Yards Company, or to its business, was and is repugnant to an act of Congress of April 3, 1884, entitled "An act to establish a bureau of animal industry, and to prevent the exportation of diseased cattle," etc., and amendments and acts supplemental thereto.

Eleventh: Because the testimony shows that all of the feed sold by the Stock Yards Company was sold and paid for in the State of Missouri, and yet the court erroneously found and held that the prices of such feed so sold and paid for in the State of Missouri are regulated and controlled by the act of the Legislature of March 3, 1897, complained of herein, and also erroneously found and held that said act applied to the sales of feed so sold and paid for in the State of Missouri.

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Fourteenth: Because the court erroneously found that the said act of March 3, 1897, relating to stock yards, and complained of herein, applied to charges made by the defendant Stock Yards Company for the use of its property situated wholly within the State of Missouri.

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Sixteenth: Because the testimony shows that the present value of the property of the Stock Yards Company, used exclusively for stock-yards purposes, as a completed structure or unit, was and is over $9,500,000, yet the Special Master in his report erroneously fixed the present value of the property of the Stock Yards Company, used and operated for stock-yards purposes, as a dead structure and in segregated parts only, and such valuation in such form was erroneously approved by the court, and the court erroneously valued said property in the same way and refused to value said plant or property of the Stock Yards Company as a completed structure, or as a unit, or as a going concern, and erroneously refused to value or consider as of any value the connections that said Kansas City Stock Yards Company had at and prior to the commencement of these suits and still has, and then and now existing, between such plant or system, and the several beef and pork packing establishments connected with and adjoining the said stock yards, and the connections made and then and now existing between the said Kansas City Stock Yards Company and the various common carriers and railroads having connections therewith.

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Eighteenth: Because the testimony shows that the tangible and intangible property of the Stock Yards Company possessed a value in combination and from use, which ought to have been recognized in estimating the present actual value of the plant and property of said company, and yet the court wholly ignored the value of the intangible property of said company, and failed and refused to give any value to the tangible and intangible

property on account of its combination and use together, as a unit in its operation and management.

Nineteenth: Because the court (without any examination of the evidence offered and submitted upon the trial) founded its final decree solely and alone upon the findings of the Special Master, filed in this court on August 24, 1897, and upon the alleged facts therein stated, when in truth and in fact findings numbers sixteen, forty-one, forty-three, forty-six, forty-seven and forty-eight of said Special Master's report are not supported by the preponderance of the evidence, or the weight of the evidence, or by any competent evidence whatever, and all of the evidence in the record is contrary to and contradictory of each of said findings aforesaid.

Twentieth: Because the court overruled the ninth exception of the complainants to the sixteenth finding of the Master's report, when the evidence showed that the cash investment of the Stock Yards Company in the property, the cost of which, under the order of reference, was to be ascertained by the Master, amounted to the sum of $6,374,208.07.

Twenty-first: Because the testimony showed that the cash investment made by the Stock Yards Company in the property used and occupied by it for stock-yards purposes was, at the commencement of these suits, $6,374,208.07, when the court erroneously assumed, found and held that such investment was only $3,852,361.81.

Twenty-second: Because the court erroneously overruled the thirteenth exception of the complainants to finding number

thirty-three of the Master's report, respecting the earnings and expenditures of the defendant Stock Yards Company, when the said finding was contradicted by the stipulation of the parties filed herein, and made "for the purpose of removing any question which may exist in regard to the manner in which the earnings of the Stock Yards Company are or were disbursed."

Twenty-third: Because said stipulation of the parties showed that the income of the Stock Yards Company for 1896 amounted to the sum of $1,023,870.20, and that the expenditures out of the earnings for the same year for operating and maintaining its plant in a serviceable condition, amounted to the sum of $537,543.70, and the court, wholly disregarding said stipulation, erroneously found and held said earnings and disbursements at other and different sums, and at a much less sum than that agreed to by the parties in writing.

Twenty-fourth: Because the court erroneously overruled the sixteenth exception of the complainants to finding number thirty-five of the Master's report, when the said finding was contrary to the stipulation of the parties produced before said Master and also before said court.

Twenty-fifth: Because the court erroneously overruled the eighteenth exception of the complainants to finding number thirty-seven of the Master's report, when said finding was in direct conflict with the stipulation of the parties, concerning the expenditures of the said Stock Yards Company during the first five months of the year 1897.

Twenty-sixth: Because the court erroneously overruled excep-

tion twenty-three of the complainants to finding number forty-three of the Special Master, respecting the value of the property of the Stock Yards Company, when the evidence showed that such property was at the commencement of these suits and still is, of the value of more than $9,500,000, and said Master's report erroneously showed the value of said property to be only $5,388,003.25, and the said court erroneously accepted the said so-called value of $5,388,003.25 as the present actual value of the said property, in direct conflict with all of the evidence in the cause.

Twenty-seventh: Because the court erroneously overruled exception twenty-eight of the complainants to finding number forty-eight of the Special Master, respecting the market value of the outstanding capital stock of the defendant Stock Yards Company, when the evidence upon this question showed that the market value of the outstanding stock during all of the year 1896 and immediately prior to the passage of the act of March 3, 1897, complained of in the bills of complaint filed herein, was more than $135 per share of the par value of $100, and the court thereon erroneously failed and refused to find that the value of the property of the Stock Yards Company, based upon the amount for which the stock of the said corporation was bought and sold in the market.

Twenty-eighth: Because the court erroneously declined to ascertain the value of the property of the defendant Stock Yards Company by an examination of the evidence in the record, which conclusively showed the market value of the outstanding capital

stock of the Stock Yards Company during the year 1896 and immediately prior to the passage of the act of March 3, 1897, complained of in the bills of complaint filed herein.

Twenty-ninth: Because the court erroneously overruled the exceptions of the complainants to findings of the Special Master, and each and all of said exceptions.

Thirtieth: Because the evidence showed that the cost of reproducing the property of the Stock Yards Company at the present time and also just before the commencement of these suits, would have exceeded the sum of $9,500,000, and the court erroneously declined to give any consideration to such evidence in ascertaining the value of said property, and refused to fix the value of said property at the present cost of reproduction.

Thirty-first: Because the court erroneously found and held that the defendant company, under the operation of the act of March 3, 1897, complained of in the bills of complaint filed herein, would receive an annual net income of between five and six per cent. upon the present actual value of the property, when the testimony conclusively shows that the annual net income of said company under the operation of the said act of March 3, 1897, if applied to the business of the Stock Yards Company and the property used by it for stock-yards purposes, would be less than two per cent. upon the present actual value of said property.

Thirty-second: Because in reaching the conclusion that the net income of the defendant company, under the operation of the act in question, would be between five and six per cent. upon the

value of its property, the court erroneously included in such net income the whole income derived by the defendant company from sources not affected by the statute and not derived from the stock-yards business.

Thirty-third: Because the court received and considered as testimony tending to show the present actual value of the property of the Stock Yards Company, used for stock-yards purposes, the evidence of one C. D. Parker, produced as a witness by the defendant Louis C. Boyle, as Attorney-General of the State of Kansas, and subsequently based its decree on such and similar testimony, when the following evidence of the said Parker shows that he was not a proper expert witness as to the value of the property in controversy, and was not competent to give any testimony in that regard.

"Q. You don't know anything about the value of the use of that land for stock-yards purposes? A. No, sir.

"Q. If another stock yards company should come in, do you think it could procure as desirable a location in the bottom? A. I don't think it could.

"Q. Now state, if you can, what is the actual present value of the land for stock-yards purposes? A. I don't know."

Thirty-fourth: Because the court received and considered as testimony tending to show the present actual value of the property of the Stock Yards Company, used for stock-yards purposes, the evidence of one E. S. Merrill, produced as a witness by the defendant Louis C. Boyle, as Attorney-General of the State of Kansas, and subsequently based its decree on such and similar testimony, when the following evidence of the said

Merrill shows that he was not a proper expert witness as to the value of the property in controversy, and was not competent to give any testimony in that regard:

"Q. What is the land worth in this tract marked 'E,' concerning which you have testified, lying east of Water street, in its present condition, just as it stands to-day? A. I don't know.

"Q. Then, as I understand your testimony, you are not testifying about the value of the property as it stands to-day, in its present condition? A. Not improved property.

"Q. You can answer that question by yes or no. You are not testifying of the value of 'E' as it stands to-day? A. No.

"Q. Now, then, in making up your value in reference to the tract marked 'E,' you consider that as naked acre property without any improvements, or without any business at all? A. Yes, sir.

"Q. That is the fact, is it? A. Yes, sir."

Thirty-fifth: Because the court received and considered as testimony tending to show the present actual value of the property of the Stock Yards Company, used for stock-yards purposes, the evidence of one E. F. Allen, produced as a witness by the defendant Louis C. Boyle, as Attorney-General of the State of Kansas, and subsequently based its decree on such and similar testimony, when the following evidence of said Allen shows that he was not a proper expert witness as to the value of the property in controversy, and was not competent to give any testimony in that regard:

"Q. Do you know the present value of the use of this land by the Stock Yards Company? A. What they are worth to the Stock Yards Company?

"Q. Yes, sir. A. No, sir.

"Q. In making your estimates of value, you were not influenced by the value of the use to which the lands were put by the company? A. No, sir.

"Q. Not at all? A. No, sir."

Thirty-sixth: Because the court received and considered as testimony tending to show the present actual value of the property of the Stock Yards Company, used for stock-yards purposes, the evidence of one R. E. Cable, produced as a witness by the defendant Louis C. Boyle, as Attorney-General of the State of Kansas, and subsequently based its decree on such and similar testimony, when the following evidence of the said Cable shows that he was not a proper expert witness as to the value of the property in controversy, and was not competent to give any testimony in that regard:

"Q. Have you sold any real estate in the vicinity of that tract? A. No, sir.

"Q. Have you bought any? A. No, sir.

"Q. You have never had any transactions of buying or selling property around there? A. No, sir.

"Q. What, in your opinion, is that tract 'E' worth just as it is to-day? A. For general purposes, or for the purposes for which it is being used?

"Q. For the purpose for which it is being used. A. Certainly, I could not answer that question.

"Q. You don't know? A. No, sir."

Thirty-seventh: Because the court received and considered as testimony tending to show the present actual value of the property of the Stock Yards Company, used for stock-yards purposes, the evidence of one C. W. Whitehead, produced as a witness by the defendant Louis C. Boyle, as Attorney-General of the State

of Kansas, and subsequently based its decree on such and similar testimony, when the following evidence of the said Whitehead shows that he was not a proper expert witness as to the value of the property in controversy, and was not competent to give any testimony in that regard:

"Q. What is this property marked 'A,' 'B,' 'C,' 'D' and 'E' worth for stock-yards purposes? A. I don't know.

"Q. What is the value of this property for railroad purposes? A. I don't know.

"Q. What is the value of this property for packing-house purposes? A. I don't know anything about the packing-house business.

"Q. What would be the value of that property for packing-house purposes? A. I have stated, I believe, that I don't know."

Thirty-eighth: Because the court erred in giving any consideration whatever to any of the testimony produced by the defendant Louis C. Boyle, as Attorney-General of the State of Kansas, concerning the present actual value of the property of the Kansas City Stock Yards Company, used and operated for stock-yards purposes in the States of Kansas and Missouri, including the structures thereon and personal property necessarily connected therewith, for that none of such testimony valued or considered the plant or property of the Kansas City Stock Yards Company as a unit, or as a completed structure, or as an entirety, or as a going concern, but all of said testimony estimated and assessed the value of the lands thereof as naked land only, divested of all improvements, and then valued the improvements separate and apart from the land, and then valued the personal

property separate and apart from the improvements or land; whereas, the Special Master and also the court should have valued all the property of the Kansas City Stock Yards Company used for stock-yards purposes, as a unit, taking into consideration the uses to which it is put and all the elements making up its aggregate value, and the value thereof ought not to have been confined to naked lands, improvements separate and apart therefrom, and personal property separate and apart from the improvements and lands, but the value of each part of said plant, if valued separately, should have included the proportionate part of the value resulting from the combination of the means by which the Stock Yards Company's business was carried on, a value existing to an appreciable extent throughout the entire domain of its operation.

. . . . . .

Fortieth: Because said act of March 3, 1897, relating to stock yards, and complained of in the bills of complaint filed herein, is invalid as class legislation and as being directly contrary to the provisions of section 1 of the fourteenth amendment to the Constitution of the United States.

Forty-first: Because the testimony shows that the stock yards owned and operated by the defendant company was the only stock yards within the State of Kansas to which the act of March 3, 1897, was intended to or could have any application.

. . . . . .

Forty-fourth: Because the decree of the court and the written opinion of the court filed in support thereof, are contrary to the weight of the evidence.

Forty-fifth: Because the decree of the court and the opinion of the court filed in support thereof, are contrary to all of the evidence.

Forty-sixth: Because the decree of the court and the opinion of the court filed in support thereof, are contrary to law.

Forty-seventh: Because the decree of the court should have been rendered in favor of the complainants and each of them, upon the testimony submitted.

(R. 950-961, 966-968.)

FIRST POINT.

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 87, BEING CHAPTER 240, SESSION LAWS OF KANSAS OF 1897, RELATING TO STOCK YARDS, IS CLASS LEGISLATION, AND VIOLATIVE OF THE EQUALITY CLAUSE OF THE FOURTEENTH AMENDMENT.

It appears from the House Journal of the Kansas Legislature of February 10th, 1897, and from the Senate Journal of the Kansas Legislature of 1897, (R. 814-816), that the substitute for House Bill No. 87, now published as chapter 240, Session Laws of Kansas of 1897, *was enacted and intended to apply to the Kansas City Stock Yards Company only—to no other corporation or company.* (R. 814-816.)

It is true that the act in controversy does not specifically name the Kansas City Stock Yards Company, yet the proceedings of the House and Senate of the Legislature of the State of Kansas, on February 9 and 10, 1897, as well as the act itself, so refer to and describe the Kansas City Stock Yards that there can be no question with regard to the application of the law to those yards, and those only; and this is substantially the same as naming the company.

At the session of the Legislature of Missouri, on February 5th, 1897, the Legislature appointed a committee to confer with a similar one to be appointed by the Legislature of Kansas, "*regarding the regulation and control of the stock yards lo-*

cated at Kansas City, Missouri, and Kansas City, Kansas." (R. 814-816.)

On February 9, 1897, the Kansas State Senate adopted a resolution that a committee consisting of five members—two from the Senate and three from the House—should be appointed to meet and confer with the committee appointed by the Legislature of Missouri, for the purpose above stated. This resolution was adopted, and Messrs. Jumper and Morrow were appointed the members of the committee from the Senate. (Senate Journal of 1897, p. 413. R. 814.)

On February 10, 1897, the Kansas House of Representatives adopted a resolution, similar to the one referred to, to confer with the Missouri committee "*regarding the regulation and control of the stock yards located at Kansas City, Missouri, and Kansas City, Kansas.*" (House Journal of 1897, pp. 428-429. R. 815.)

The members of the committee appointed by the House were Messrs. Jaquins, Ravenscraft, and Johnson.

On February 17, 1897, Mr. Jaquins, chairman of the Committee on Live Stock appointed by the Senate and House, reported the substitute for House Bill No. 87, heretofore referred to. (R. 816.) He stated in his report that upon a conference with the Missouri committee, this bill was deemed "judicious and wise legislation." (House Journal of 1897, p. 598. R. 816.) The proceedings of the Legislature as they appear in its journals may be considered in interpreting an act passed by that body.

Mr. Jaquins, who was appointed upon the committee of the Legislature of Kansas to meet a like committee of the Legislature of Missouri, was made chairman of that select committee (R. 816), and was also the chairman of the standing Committee on Live Stock in the Legislature of Kansas of 1897, and said substitute for House Bill No. 87, as reported by him as chairman of the Committee on Live Stock, is the act now known as chapter 240, relating to stock yards, Session Laws of Kansas of 1897, and is the act complained of in the bills filed herein. (R. 815-816.)

A copy of the Kansas Senate Journal of 1897, and of the House Journal for the same year, relating to said matters, is hereto attached, marked "Exhibit E." (R. 814-816.)

It is not claimed that there are any other stock yards in the State of Kansas that have the business of the Kansas City Stock Yards Company, or the average daily receipts of live stock referred to in section 1 of said chapter 240, Session Laws of Kansas, 1897. (R. 41-42.)

Section 1 reads:

"Any stock yards within this State, into which live stock is received for the purpose of exposing or having the same exposed for sale or feeding, and doing business for a compensation, and which for the preceding twelve months shall have had an average daily receipt of not less than one hundred head of cattle, or three hundred head of hogs, or three hundred head of sheep, are hereby declared to be public stock yards."

If we concede the power of the Legislature under some circumstances to classify stock yards companies, and prescribe one

rate for one class and other rates for other classes, the classification cannot be arbitrarily made.

In the case of the *Gulf, Colorado & Santa Fe Railway Co. v. Ellis*, 165 U. S. 150, Mr. Justice BREWER, speaking for this court, says:

"Yet it is equally true that such classification cannot be made arbitrarily. The State may not say that all white men shall be subjected to the payment of attorney's fees as parties successfully suing them and all black men not. It may not say that all men beyond a certain age shall be alone thus subjected, or all men possessed of a certain wealth. These are distinctions which do not furnish any proper basis for the attempted classification. That must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis.

. . . . . .

"It must be evident that differences which would serve for a classification for some purposes furnish no reason whatever for classification or legislative purposes. The differences which will support class legislation must be such as in the nature of things furnish a reasonable basis for separate laws and regulations.

. . . . . .

"It is apparent that the mere fact of classification is not sufficient to relieve the statute from the reach of the equality clause of the fourteenthamendment, and that in all cases it must appear not only that a classification has been made, but also that it is based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification."

A favorite method adopted by cunning Legislatures is to evade constitutional provisions forbidding unlawful discrimi-

nations. On the face of the act of March 3, 1897, taken in connection with what appears in the House and Senate Journals, no other stock yards but those of Kansas City could have been meant. The act was so framed that it was not likely, and hardly possible, that any other stock yards would come under the so-called law. The courts ought not to connive at the evasion pointed out.

Central Trust Co. of New York v. Citizens Street Railway Company of Indianapolis, 80 Fed. Rep. 218.

The Kansas Supreme Court has sustained in some instances the division of the cities of the State into certain classes, based exclusively on population; but in the case of the *City of Topeka v. Gillett,* 32 Kan. 431, it was decided that "*where an act of the Legislature is so special in its provisions that it can only apply to three certain cities, it is unconstitutional and void.*" In that case, it was observed by VALENTINE, J.:

"The question then, in the present case is, not whether the powers attempted to be conferred by the Legislature in 1875 upon certain cities of the second class by said chapter 73 of the Laws of 1875, are special powers or not; but the question is, whether the act attempting to confer such powers is a special act or not. As before stated, the act is general in its form, but as before intimated, the constitutionality of the act is not to be determined by its form, but is to be determined by what in the course of ordinary things must necessarily be its operation and effect. If its operation and effect must necessarily be special, the act is special, whatever may be its form."

See also—

State v. Simon, 22 Atl. Rep. 120.

State v. Hammer, 42 N. J. Law, 435.

State v. Smith, 26 N. E. Rep. 1069.
Harding v. People, 160 Ill. 459.

In the case of *Adams v. Nemeyer,* 54 Ohio St., 614, the court says:

"The act of the Legislature passed March 1, 1892, authorizing cities having at the last federal census a population of 18,553 to issue and sell the bonds of the city, to be used for the purpose of purchasing grounds and buildings within such city or its immediate vicinity for manufacturing purposes, is invalid because it is a special act of a general nature conferring corporate powers."

In *Railway v. Martin,* the Supreme Court of Ohio rebukes the favorite evasion by the Legislature of that State of seeming to adopt a general law, and yet making it local or special in its application, as follows:

"The classification of such cities upon such a basis is, in our judgment, too restrictive, uncertain and elusory to relieve the act from the constitutional infirmity of not being uniform in its operation throughout the State, but local and special in its character." (53 Ohio St. 386.)

A statute would not be constitutional which selects particular individuals from a class or locality and subjects them to peculiar rules or imposes upon them special obligations or burdens, from which others in the same locality or class are exempt.

Gillett v. Topeka, supra.
Cooley's Cons. Lim., 6th ed., 479, 482, 483, and notes.

See also the following cases, where acts of Legislatures have been held unconstitutional as class legislation:

Wages law of Missouri of 1885, applying to manufacturers and mine-owners. (*State v. Loomis*, 115 Mo. 307.)

State v. Goodwill, 33 W. Va. 179.

The eight-hour law of Nebraska of 1891, excluding farm hands. (*Low v. Printing Company*, 41 Neb. 127.)

Same ruling as to the eight-hour law of Colorado of 1895, concerning special industries. (*In re Eight-Hour Law*, 39 Pac. Rep. 328.)

Mining law of Illinois of 1883 and 1885, as to weighing-scales, etc. (*Millette v. People*, 117 Ill., 294.)

State v. Sheriff, 48 Minn. 236.

Law of California of 1893 relating to the classification of cities. (*Darcy v. Mayor*, 38 Pac. Rep. 500.)

An act of Ohio of 1888 applying to a city. (*City of Cincinnati v. Steinkamp*, 43 N. E. 490.)

City ordinance relating to Sunday law, excluding Jews. (*City of Shreveport v. Levy*, 26 La. Ann. 671.)

There is but one stock yards company in the State of Kansas which answers the description of the act of March 3, 1897. Those stock yards are operated by the Kansas City Stock Yards Company.

The action of the Legislature of 1897, relating to stock yards, was not a just and fair classification, but an arbitrary specification which applies to a single company.

Again, the court will notice that the Legislature intended to limit the provisions of said act of March 3d, 1897, to stock yards "*which for the preceding twelve months shall have had an average daily receipt of not less than 100 head of cattle, or 300 head of hogs, or 300 head of sheep.*" Giving the word "preceding" the usual construction, it was evidently the purpose of the Legislature of Kansas by inserting "preceding" to

mean twelve months prior to the date of the passage of said act of March 3d, 1897. If such construction be given to said section 1, then under all the authorities, the act must be declared unconstitutional, because it could under no circumstances have application to any other stock yards than the defendant in this suit. Under such a construction it is not probable, nor in the nature of things possible for the act to apply to any other stock yards in the future. As the statute was clearly intended for a particular case, and practically looks to no broader application, it is vicious class legislation, and therefore unconstitutional. When an act is found to fit a special case only, it is deemed to have been intended solely for it.

Sutherland's Const. of Stat., § 129, and the cases cited.

If it were possible, by any construction of section 1 of the act of March 3d, 1897, to apply the provisions thereof to any other stock yards in the future, it is apparent that in any event, for nearly twelve months, such new stock yards, having the daily receipts prescribed in the statute, would not have its rates and prices regulated or restricted by said act. Therefore, any stock yards that might in the future come within the provisions of said act would have nearly twelve months of discrimination in its favor as against the Stock Yards Company. Thereby the statute would deprive the defendant company of nearly twelve months of equal protection of the law, which is secured to it by the Fourteenth Amendment of the Constitution.

Section 1 does not classify by population, as in *Munn v. Illinois*, 94 U. S. 113, and *Budd v. New York*, 143 U. S. 517.

In the Munn case, the statute applied to the "warehouses at Chicago and other places in the State having not less than one hundred thousand inhabitants, in which grain is stored in bulk."

In the Budd case, the statute applied "only to places which have one hundred and thirty thousand population or more."

But section 1 of the act of 1897, for the reasons referred to, we think is outside of the decisions construing classification by population.

Equality of rights, privileges and capacities among all the people, so far as they are granted by law, or are enjoyed under its protection, has always been the general rule; special privileges are not to be granted to, nor special burdens imposed upon some members of the community; the State has neither favors to bestow, nor injuries to inflict upon any of its citizens. As was said by the Supreme Court of Massachusetts, as early as 1814, in the case of *Holden v. James*, 11 Mass. 396, 405: "It is manifestly contrary to the first principles of civil liberty and natural justice, and to the spirit of our Constitution and laws, that any one citizen should enjoy privileges and advantages which are denied to all others under like circumstances; or that any one should be subjected to losses, damages, suits, or actions, from which all others, under like circumstances, are exempted."

Mr. Justice Field observed, in the *Santa Clara Railroad Tax Case*, 9 Sawy. 165, and 118 U. S. 394:

"No State—such is the sovereign command of the whole people of the United States—no State shall touch the life, the liberty or the property of any person, however humble his lot

or exalted his station, without due process of law; and no State, even with due process of law, shall deny to any one within its jurisdiction the equal protection of the laws."

The Kansas City Stock Yards Company, although a corporation, is a person within the Fourteenth Amendment.

Smyth v. Ames, 169 U. S. 466.

SECOND POINT.

THE FINAL DECREE OF THE COURT BELOW NECESSARILY GIVES TO THE ACT OF MARCH 3d, 1897, RELATING TO STOCK YARDS, EXTRA-TERRITORIAL FORCE.

The collections by the Stock Yards Company, under the head of yardage and feed, embrace, as before stated, all of the charges of the company for services from the time the live stock is unloaded in the yards until it is sold or reshipped, including driving, yarding, feeding, watering, weighing (in case the stock is sold), responsibility for safety of stock in the yards, the privilege of a valuable market on the grounds of the company, and other necessary services. The income from the sale of feed by the Stock Yards Company in 1896 was $187,994.69, after deducting the cost of the feed, which was of the best quality, *but allowing nothing whatever for the very large expense of handling and delivering it*, or for its insurance, care, etc.

Finding of Master, No. 20. (R. 65.)

"ALL OF THE FEED IS SOLD AND PAID FOR IN THE STATE OF MISSOURI."

Finding of Master, No. 21. (R. 65.)

The company delivers the feed, after it is bought and paid for in Missouri, at such pens or places in Missouri or Kansas and in such quantities as may be required by the purchaser. The delivery of the feed is usually required in small quantities. The amount so called for being inconsiderable for each head of stock, exact accounts are necessarily kept by the company of all of these small orders.

The following table No. 1 shows the gross income, cost of operation and maintenance (according to the written stipulation of the parties), and net income from the sale of feed at the yards in 1896:

FEED. TABLE No. 1.

	Gross Income.	*Rate % of operation and cost of maintenance, as per stipulation, 52.51%.*	*Net Income.*
Amount received for feed (less cost) served to cattle, hogs, calves and sheep	$150,432.54	$78,992.13	$71,440.41
Amount received for feed in horse and mule department (less cost),	27,385.59	14,380.17	13,005.42
Amount received for feed in Gould barn (less cost)	10,176.56	5,343.71	4,832.85
Totals	$187,994.69	$98,716.01	$89,278.68

(R. 74.)

The following table shows what would have been the result upon the business of the Stock Yards Company in 1896, in its transactions in feed, if the rates provided for by the act approved March 3, 1897, had prevailed in that year:

FEED. TABLE No. 2.

	Gross Income.	*Cost of operation and maintenance the same as in Table No. 1.*	*Net Income.*
Amount received for feed served to cattle, calves, hogs and sheep (less cost of feed)	$74,258.34	$78,992.13	—$4,733.79 Deficit.
Amount received for feed in horse and mule department (less cost of feed)	27,385.59	14,380.17	13,005.42
Amount received for feed in Gould barn (less cost of feed)	6,104.27	5,343.71	760.56
Totals	$107,748.20	$98,716.01	$9,032.19

It appears from this table that the rate per cent. of diminution of income from feed by the application of the act is as follows:

On net income from the sale of feed, outside of horse and mule department and Gould barn, 106.6 per cent.

On net income from horse and mule department, no change whatever; the income and expenditures remain the same, for the reason that in 1896 the rate per cent. of profit was less than one hundred.

On net income from Gould barn, the per cent. of reduction is 84.27.

The total amount of the reduction is $80,246.49, which is a rate per cent. of 89.88.

The Master reports in finding No. 38, that—"The cost of hay and grain consumed by cattle, calves and hogs and sheep was $74,258.34. The company received therefor, $224,690.88, or a profit of 202.58 per cent.

"The cost of hay and grain consumed in the horse and mule department was $29,839.85, represented by the per capita charges mentioned in finding No. 24. The company received for such hay and grain, $57,225.44, or a profit of 91.78 per cent.

"The cost of the hay and grain consumed in the Gould barn was $6,104.27, represented by the gross earnings of the barn; the company received for such hay and grain $16,280.83, or a profit of 166.71 per cent. It will thus be seen that all the hay and grain consumed cost $110,202.46, and was sold for $298,-197.15, which produced a profit of $187,994.69, or an average of 170.59 per cent. (R. 74.)

The findings of the Master as to the profits realized by the

company in selling hay and grain, are misleading, because they do not take into consideration any expenses connected with the sale and delivery, or the insurance, or the expenses of storing and caring for the same. Nor do the findings take into consideration any expenses whatever for the cost of operating and maintaining the yards where the hay and grain are sold. The findings embrace the actual moneys received by the Stock Yards Company for the hay and grain sold, less the actual price paid for the same. This and nothing more.

[See stipulation as to purchases of hay and grain for 1896 (R. 81.); The stipulation of the parties of the disbursements of the earnings of the Stock Yards Company in 1896, "*for operation, maintenance and extensions of improvements*" (R. 82, 89-91); The stipulation of the parties concerning moneys actually expended by the Stock Yards Company during the first five months of the year 1897, "*for operating expenses and cost of maintenance.*" (R. 81-82.) Findings of Master, Nos. 20 and 21.] (R. 65.)

No one is permitted to sell hay or grain except the company in the yards, but shippers of live stock, if they prefer, may feed their stock in the railroad cars transporting the same before they reach the yards. Mr. E. Peck, a stock raiser of Cloud county, Kansas, a witness called by the Attorney-General, testified, among other things, as follows:

"Q. What is the practice of shippers to feed in the cars? A. I feed in the cars.

"Q. Do you know whether any considerable number of ship-

pers feed in the cars, and do not feed in the yards? A. I know they don't. I can say that for most of them from our country.

"Q. Why don't they feed in the yards? A. On account of the grain being so high." (R. 788-789.)

He further testified, as follows:

"Q. Do you know what the average amount of feed to the carload of hogs at the Kansas City market is? A. I know what they used to feed.

"Q. How much? A. About a bushel and a half.

"Q. How much would that be to the head? A. I don't know.

"Q. It wouldn't be 2 cents, would it? A. I don't know.

"Q. Well, at a dollar a bushel for 71 head in a car, and a bushel and a half to the car, would be about 2 cents a head, would it not? A. Something like that.

"Q. And you say you don't feed in the yards on account of the expense? A. Yes, sir." (R. 789.)

Mr. N. B. Greer, who is engaged in Kansas City, Missouri, in the live stock commission business, called as a witness by the Attorney-General, testified that he had often received orders from the owners of stock not to feed their stock, on account of the prices in the yards; and he further testified:

"Q. Where do they feed when they don't feed in the yards? A. In the car,—corn to the hogs and hay to the cattle."

(R. 792.)

Finding No. 36 of Master. (R. 73.)

Therefore, it appears from the testimony offered by the Attorney-General that the Stock Yards Company not only has no legal monopoly of the sale of hay and grain for feeding cattle transported to the yards, but it has no actual or practical monopoly thereof, because shippers, if they desire, may feed

their live stock hay and grain upon the cars before reaching the yards. That they generally feed their cattle in the yards is a matter of preference,—not of compulsion,—if the live stock are sold, as they usually are, on the morning of their arrival in Kansas City.

All live stock reach the yards about the same time; that is, the great bulk of the receipts of live stock designed for the market. The railroad companies, to accommodate the shippers, arrange the time of arrival of their stock trains so that the stock is received, unloaded and yarded between the hours of midnight and eight o'clock in the morning,—with probably three-fourths of it between five o'clock and eight o'clock in the morning. The live stock market "opens from half-past seven to half-past eight;—if it is a sharp market, a little earlier; if it is a little draggy it may run along as late as ten o'clock before they begin to sell." (Testimony of Harry P. Child, Assistant General Manager of the Stock Yards Company. R. 111.)

The live stock are fed by the Stock Yards employés whatever amount of hay is ordered by the owner or his commission-man. The average is 115 pounds per car-load of 23 cattle. *About five cents' of hay is fed on an average to each head of cattle. The charges for cattle per head for hay and watering, including yardage and all the services connected therewith, is five cents for hay and twenty-five cents for yardage, making in all thirty cents. After cattle reach the yards, additional weight is given to each head by the hay and water that is furnished by the company, on an average of 35 pounds. If the owner or shipper gets the addi-*

tional price for this hay and water, it would amount to $1.15 for each head, for which he pays the Stock Yards Company thirty cents. On an average, the cattle take, after they reach the yards, about thirty pounds of water. It sometimes runs up to 75 pounds. After the cattle are filled, and get all that they will drink, they are weighed. The watering and feeding is before weighing. (R. 113-116.)

Mr. Child, Assistant Superintendent, also testified:

"Q. How many tons of hay did you use last year? A. 11,400, I believe.

"Q. Tons? A. Yes, sir; nearly 11,500 tons.

"Q. How much did you sell that for per ton? A. Twenty dollars.

"Q. How much did it cost you? A. For the hay alone, about seven dollars a ton.

"Q. Where did you buy it? A. We contracted three-fourths of it of different men in different parts of the State and bought about one-fourth of it on the market.

"Q. Do you mean to say you paid seven dollars a ton for the hay you contracted for? A. Yes, sir; we had to do it because we use such an enormous amount of it, and not choice hay, but gilt-edged hay. We have to have a strictly fancy brand of hay. Charging the price we do, there is no excuse for not giving the best, and that is in such limited quantities on the market that no contractor will take the chances. You see the contract has to be made before the grass is grown, and he has got to take that into account, and those are the prices we have to pay in competitive bidding. Some bids run up to nine dollars a ton, but we contracted seven or eight thousand tons at seven dollars a ton. We have to do that because of the danger of being cornered. We are different from a feed store.

"Q. You sell that hay for twenty dollars a ton, don't you? A. Yes, sir; and sell all the labor with it, too."

And in answer to redirect interrogatories propounded to him by A. H. Horton, solicitor for the complainants, the witness testified as follows, to wit:

"Q. Mr. Child, we come right back to this question he has just asked you. He said you sold hay at twenty dollars a ton. Is that twenty dollars a ton simply for the hay? A. No, sir; that is for all the expense the Stock Yards Company is put to in addition to the cost of the hay.

"Q. How many separate deliveries are made of one ton of hay? A. Well, it averages about twenty.

"Q. How much force does it take to make these deliveries? A. We have eighteen wagons with two men each in that business, just as fast as they work, three or four hours in the morning.

"Q. You spoke about insurance on hay. What did you mean by that? A. That is the hay I spoke of that we keep stored against emergencies.

"Q. How much hay do you keep stored all the time? A. About two thousand tons.

"Q. State whether it would be practicable in the operation of your yards to go upon the market here daily and buy hay. A. It could not be done at all. We could n't get the hay. The supply is too irregular.

"Q. What do you say about buying hay per ton? A. I said we pay seven dollars on these contracts for about three-fourths of our hay, and one-fourth we bought on the market; the eight-dollar figure came on this stored hay; with the insurance, buildings, etc., hauling to the yards, represents a dollar a ton.

"Q. How did you use to pay for hay? A. We have paid as high——for months or weeks?

"Q. Yes. A. We have paid for months as high as fifteen dollars a ton, and at one time we paid twenty-four dollars a ton and sold it for twenty. We have never raised the price of hay when the market went up. Almost always in the winter season the

market ranges from ten to fifteen dollars a ton. The last two years it has been exceptionally low; it is about eight dollars now.

"Q. Mr. Child, how do competitors know when to bid for hay? A. Once a year I send out notices to these different men that we have discovered in the past to be responsible men, and I presume they talk about it, and we get applications sometimes from thirty or forty people.

"Q. Do you have any stated time in which they are allowed to bid? A. It is generally about the first of June.

"Q. You have no set thirty or sixty days? A. No; it is gauged wholly by the prospects of the hay crop.

"Q. By mail, I suppose? A. Yes; by mail."

(R. 113-115.)

"Q. What additional price, then, would the owner or shipper get, the average price, on account of the hay and water furnished? A. Using the same prices as in the case of the carload, five cents per pound, it would be $1.15.

"Q. Now, let me ask you in this connection whether this feed and water are necessary for the support of the animal at that time, or merely for the purpose of filling it up and getting greater weight? A. Entirely for the purpose of filling it up and getting greater weight.

"Q. Why is that so? A. The owner has no further interest in increasing the health of the animal or its general comfort, as he is just disposing of it to other parties, and desires to get just as much for it as he possibly can, and therefore he adopts this custom.

"Q. Let me ask you again whether or no the feeding and watering is before the sale or after the sale? A. It is after the sale, but it consummates the sale; the feeding is before the weighing.

"Q. That is what I want to know directly; does the owner or shipper or his representative who sells the cattle feed the same after the sale or before? A. He does not feed them until after wards; they ar · shipped out or driven out afterwards.

"Q. Before he weighs them, is this feeding and watering done? A. This feeding and watering is all done before he weighs them.

"Q. After he weighs them, as a general thing, is there any feeding or weighing done by the owner or his representative? A. You mean the original owner or his representative?

"Q. Yes. A. None whatever.

"Q. But there is no weighing of an animal before the feeding and watering is had? A. No, sir.

By the MASTER: There is always this feeding; as soon as the stock is unloaded he gives his orders and it is brought around for the stock? A. Yes; he assumes he is going to sell, and he wants this extra weight.

"Q. He could sell, if he desired, without this feeding and watering, could n't he? A. Oh, yes.

"Q. I mean is it necessary in order to make a sale for the buyer? A. No, sir.

"Q. For whose special benefit is this feeding and watering? A. For the seller absolutely." (R. 114-116.)

"Q. You spoke this morning about stock being divided into various subdivisions in different pens; state whether or not that requires additional extra service on the part of the Stock Yards Company? A. It requires extra service, as we have our yards divided into divisions, and each division has a man in charge who keeps a thorough charge on all stock in his division, and he must be sure to give this stock all additional pens necessary to make a record of it, and be ready at all times to say where it is in case any one interested asks, and to assort it out to those who have authority to receive it from him.

"Q. Is all of that service included under the head of yardage and feed? A. Yes, sir.

"Q. You spoke about water this morning. State how that water is measured to your company. A. The water is received from the Metropolitan Water Works Company of Kansas City, Kansas, and all comes through meters and is measured to us,

and bills presented at the contract rate every month for every gallon received.

"Q. State whether or not the value of all that water and the service of furnishing it is included under the expense of yardage aad feeding. A. Every particle of that expense is included in the yardage and feeding charge.

"Q. Who has to pay for that water? A. The Kansas City Stock Yards Company.

"Q. How free is it to the shippers of stock? A. No limit whatever within reason; all that the stock can use or require is given, and the only limit we place upon it is just simply turning it loose.

"Q. In other words, not to be wasted? A. No; but everything that even fancy could suggest that the stock required for drinking or cooling in hot weather is used. Millions of gallons are used in just sprinkling—playing it over the hogs.

"Q. What is necessary in certain seasons of the year as to the additional use of water for the hogs? A. During the warm months the hogs get very hot if they are heavy and quite fat.

"Q. What is done with them as to water? A. When they seem to be, in the judgment of the owner or his representative, warm, they are permitted to put a hose on the hydrant of the pen in which the hogs are, and to play the water over the backs of the hogs to cool them; and, as I said a moment ago, this is done to the extent of millions of gallons during the warm weather; the same thing with excessively fat cattle also.

"Q. Is any pay exacted for the water so used, except as included in yardage and feed? A. None whatever."

(R. 118-119.)

Eugene Rust, General Superintendent of the Stock Yards Company, testified as follows:

"The railroads have arranged their train service in such a way as to deliver the bulk of this stock in the morning between

4 and 8 o'clock, so that there shall be as little loss as possible to the shipper in its transportation.

"Q. Generally at what time of day are the sales of stock made? A. The market is usually between eight and twelve o'clock, although the hours of the market vary; sometimes the market will open earlier and sometimes later than those hours.

"Q. What is the practice as to weighing cattle there before or after they are fed? A. They are usually fed before being weighed; fed and watered.

"Q. In feeding and watering the cattle, in what does it change their weight or increase their weight? A. In the case of cattle the feeding and watering often increases their weight from 30 to 50 pounds per head on an average. It makes the cattle look fuller and adds to their appearance and consequently to their value.

"Q. Do you have under your supervision anything to do with looking after the special amount of feed that is furnished to stock? A. I have general supervision over the feeding of stock.

"Q. State how much hay is fed to the car, what you call an ordinary feed. A. The usual practice is to feed about one hundred pounds to the car.

"Q. How many head in a car usually? A. 22 to 25 on an average.

"Q. How much do you feed to a car of hogs? A. The amount varies; usually one bushel.

"Q. Of what? A. Of corn.

"Q. How many head of hogs are there in a car? A. They will average this season of the year about 70; it varies according to the season.

"Q. How much do you feed to a car-load of sheep? A. About fifty pounds.

"Q. How many sheep in a car, generally? A. Single decks about 120; the double decks would run from 220 to 240.

"Q. How much hay did you say? A. That was to the single deck; about 100 pounds to the double deck.

"Q. Of hay? A. That is what we would consider a fair feed for a car-load, although in the case of sheep I think our average feed would run not to exceed fifty pounds to the car-load right through, double and single decks, that we actually feed to the sheep." (R. 367-368.)

An examination of the printed record, pages 113-120, and of pages 366-369, will give the court very much information as to the details of feeding live stock in the yards at Kansas City. We call attention to the fact that there are about 550 separate cattle-pens in the yards in the State of Missouri (R. 357), and that in 1896 there were received in the stock yards from the State of Missouri 204,271 cattle. (R. 863.)

Colting v. Stock Yards Co., 82 Fed. 841.

All the railroads having terminals at the yards come into the same from the Missouri side of the line, with the exception of three. (R. 360-361.)

As the feed-racks are in the pens in the stock yards, and as the hay ordered by the owner or his agent for the cattle is delivered at the pens, then it is apparent that not only is the feed sold and paid for in the State of Missouri, but a large amount thereof is actually delivered and eaten in the cattle-pens in that State. Large quantities of feed so sold and paid for in the State of Missouri are delivered for cattle coming from Missouri and other States, after they are placed in the pens in Missouri.

We supposed, before the trial in the court below, that the Attorney-General would disclaim any intention upon his part of enforcing the provisions of the act of March 3d, 1897,

against the Stock Yards Company as to the prices of hay and grain sold and paid for in the State of Missouri, or for the charges for the yarding of cattle in that State. But we were disappointed. The Attorney-General insisted then and insists now that the act applies to all the business of the Stock Yards Company, including the sale of feed, whether had in Missouri or any other State.

FOSTER, J., in his opinion, intimates that the statute regulating the prices of feed sold and paid for in Missouri are regulated by the act. He states that "the prices fixed for feed are liberal." (R. 872.) Yet the Master reports that "all of the feed is sold and paid for in Missouri." The testimony is all that way.

The opinion of THAYER, J., does not discuss the sale of feed in the State of Missouri, or the yarding wholly carried on in that State, but as the business of the company, "consisting of yarding, feeding, watering and weighing live stock," is referred to and commented upon, evidently that judge sustains the view of the Attorney-General, or did not fully examine and consider the testimony thereon. (R. 940-947.)

Cotting v. Stock Yards Co., 82 Fed. 850.

The final decree dismissing the bills, if affirmed, will permit the Stock Yards Company to incur the risks of the severe penalties denounced by the act for all hay and grain sold in Missouri, and for the yardage of cattle in that State. The transactions embracing the sale of feed and yardage in the State of Missouri out of which causes of action might arise under the

statute as construed by the Attorney-General and the court below, "are so numerous and varied that the interference of equity could well be justified upon the ground that a general decree, according to the prayer of the bills (so far as the transactions in Missouri are concerned), would avoid a multiplicity of suits and give a remedy more certain and efficacious than could be given in any proceeding instituted against the company in a court of law; for a court of law could only deal with each separate transaction involving the rates to be charged. The transactions of a single week would expose any company, questioning the validity of the statute, to a vast number of suits by shippers, to say nothing of the heavy penalties named in the statute. Only a court of equity is competent to meet such an emergency, and determine once for all, and without a multiplicity of suits, matters that affect not simply individuals," but valuable and important interests.

Smyth v. Ames, 169 U. S. 466-517.

It was said in *In re Carr*, 52 Kan. 688-690, that, "It is elementary that the statutes of a State can have no extra-territorial force."

It was said in *McCarthy v. Railroad Co.*, 18 Kan. 46, and on page 48, by the Supreme Court of Kansas, that "invariably the courts have held that the statutes of a State have no extra-territorial force beyond the limits of the State of their adoption. All laws are coëxtensive and only coëxtensive with the political jurisdiction of the law-making power."

Carlile v. Hurd, 3 Colo. App. 11.

But the proposition that the law of a State has no force beyond its territorial boundaries is so well established that no citations of authorities are necessary.

The State of Kansas cannot fix the price at which feed shall be sold in the State of Missouri; and this must be true whether the sale be made in Missouri by a citizen of Kansas to another citizen of the same State or to any other person. In the Covington Bridge case, 154 U. S. 219, it is said: "For instance, suppose the agent of the bridge company in Cincinnati should refuse to recognize tickets sold upon the Kentucky side enabling the person holding the ticket to pass from Ohio to Kentucky; it would be mere *brutum fulmen* to attempt to punish such agent under the laws of Kentucky." And in this case, suppose the feed master of the Stock Yards Company in Kansas City, Missouri, charges and collects from the owner of live stock more than one hundred per cent. advance over the cost of the feed, would it not be mere *brutum fulmen* to attempt to punish such agent under the laws of Kansas.

Again, suppose the Stock Yards Company owned and operated stock yards at St. Joseph, Missouri, and through its agent or feed master there sold to owners of live stock feed at an advance of more than 100 per cent. over the cost; would such feed master or anyone else be punishable under the Kansas statute because of such transaction? Clearly not.

But if the Kansas statute could not regulate the price at which feed shall be sold by an agent of the Stock Yards Company in St. Joseph, Missouri, it cannot prescribe the price at which

feed shall be sold by an agent of the same company in Kansas City, Missouri.

If the power to fix prices at which a commodity shall be sold in Missouri resides in the Legislature of the State of Kansas, the same power over the same transaction certainly resides in the Legislature of the State of Missouri, and the prices which either State may fix (assuming that this power exists, which we deny) are entirely within the discretion of each State. Missouri might make it a crime for the agent of the stock yards company in Missouri to sell feed at more than fifty per cent. advance over cost, while Kansas might make it a crime for the same person to negotiate the same sale at an advance of more than one hundred per cent. over cost. A sale which would be entirely lawful under the provisions of the Kansas act would subject the agent to the penalties provided by the Missouri statute, and both statoperate on the same person, at the same time, and upon the same transaction. The illustrations which have been used point out the confusion and conflict which would result from any attempt on the part of a State to regulate a traffic which takes place beyond its borders.

A corporation is clothed everywhere with the character given by its charter, and the capacity of corporations to make contracts beyond the States of their creation, and the exercise of that capacity, are supported by uniform, universal and long-continued practice. (*Land Grant Rly. Co. v. Comm'rs of Coffey County*, 6 Kan. 245; *O'Brien v. Wetherell*, 14 id. 616; *Bank of Augusta v. Earle*, 13 Pet. 519; *Cowell v. Spring Co.*, 100

U. S. 55.) Hundreds of corporations are created, not strictly local in their character, as in the instance of banks and insurance companies, all of which transact business in all sections of the country.

Railroad Co. v. Fletcher, 35 Kan. 236-244.

UNJUST DISCRIMINATION.

It will be noticed that section 5, of the act of March 3d, 1897, relating to the prices of hay and grain, prescribes that the same can be sold only at a certain per cent. above the average market price or value of such hay and grain "upon the day preceding such sale and delivery." It appears from the testimony that large quantities of hay to be sold in the State of Missouri by the Stock Yards Company are contracted for as early as June of each year. "The contract has to be made before the grass is grown." It is stored in large quantities, carefully protected in buildings, insured, etc. (R. 113-115.) During the year, hay fluctuates in the markets of Kansas City, and sometimes the Stock Yards Company has paid as high as $15 a ton. At one time the company paid $24 a ton, and sold it for $20. (R. 143.) *Yet the act complained of provides that the hay must be sold in the yard, regardless of what has been paid for it, at a price not more "than one hundred per cent. above the average market price upon the day preceding such sale and delivery."* The statute thereby fetters and unjustly restricts the Stock Yards Company in the purchase and sale of its hay, when it is considered that it is delivered in small quantities.

As shippers do and can feed their live stock upon the cars before reaching the yards (R. 788-789, 792), and as the stock is generally sold on the morning of arrival, the Stock Yards Company ought not to be discriminated against as to the prices of feed sold and delivered by it. If the Legislature may regulate the prices of feed in the yards, when the shippers of stock may buy hay and grain wherever they please and feed it to their stock in the cars before reaching the yards, then the Legislature ought to regulate the prices of feed when sold by the other hay and grain dealers of Kansas. The hay and grain sold by the Stock Yards Company is simply merchandise, and the act of 1897 unjustly discriminates against the company.

The principle announced in *Budd v. New York*, 143 U. S. 517, supporting the statute of New York of 1888, regulating "trimming" in floating and stationary elevators in that State, has no application to this case. "Trimming" is defined in the Budd case, as "shoveling grain from one place to another, which is done by longshoremen with scoops or shovels." In that case, it was said: "The purpose of the statute could be easily evaded and defeated, if the elevator owner was permitted to separate the services, and to charge for the use of his steam shovel any sum which might be agreed upon between him and the shovelers' union, and thereby, under color of charging for the use of his steam shovel, to exact of the carrier a sum for elevating beyond the rate fixed by the statute." In that case, the shoveling was a necessary part of the elevating. Every

person patronizing or using a floating elevator at Buffalo, which was primarily a boat, was compelled to have trimming done,—that is, his grain shoveled. He could not do as the stock shippers sending their stock to the stock yards may do. They may buy or refuse to buy hay and grain in the yards.

The Master reports, in Finding No. 36, that "*frequently shippers purchase hay and grain from outside parties, and feed their live stock in the cars before reaching the yards, in order to avoid the payment of the charges made by the company.*"

(R. 73.)

If the shippers desire, they can buy their hay and grain elsewhere, and feed upon the cars transporting their stock before reaching the yards, where their stock is sold on arrival. In the Budd case, "trimming" was a necessary part of the "elevating." "Feeding" the stock upon the cars or in the yards is not a part of "the yardage." Hence, the Budd case and this can be distinguished.

So much for feed sold and fed in Missouri.

INTERSTATE COMMERCE.

It remains to consider the case of hay and grain sold and paid for in the State of Missouri, but delivered and fed in Kansas, which, in consideration of the purchase price received in Missouri, the company transports and delivers at the place or places designated by the purchaser. The case is as follows: The Stock Yards Company, for a valuable consideration, pursuant to a contract, transports upon its own vehicles hay and

grain from the place of its sale in the State of Missouri to a point within the State of Kansas designated by the purchaser.

But transportation for hire of either persons or property from one State to another is interstate commerce.

In the Covington Bridge case, 154 U. S. 219, it is said:

"If . . . interstate commerce means simply commerce between the States, it must apply to all commerce which crosses the State line, regardless of the distance from which it comes or to which it is bound before or after crossing such State line. In other words, if it be commerce to send goods from Cincinnati in Ohio to Lexington in Kentucky, it is equally such to send goods or to travel in person from Cincinnati to Covington."

If it would be interstate commerce to send goods from St. Joseph in Missouri to Kansas City in Kansas, it is equally interstate commerce to send hay and grain from Kansas City in Missouri to Kansas City in Kansas.

Gibbons v. Ogden, 9 Wheaton, 1.
Welton v. Missouri, 91 U. S. 275.
County of Mobile v. Kimball, 192 U. S. 691.
State Freight Tax, 15 Wallace, 232.
Wabash Ry. Co. v. Illinois, 118 U. S. 557.
Gloucester C. Co. v. Penn., 114 U. S. 196.

All of the feed served to cattle in the Kansas yards west of the State line, to all southern or quarantine cattle, to all hogs, and to all sheep, is transported by the Stock Yards Company, for a valuable consideration, from the place of its sale in Missouri to the place of its distribution by order of the purchaser in the State of Kansas.

In the case of *La Loup v. Mobile,* 127 U. S. 640, it is said:

"But it is urged that a portion of the telegraph company's business is internal to the State of Alabama and therefore taxable by the State. But that fact does not remove the difficulty. The tax affects the whole business without discrimination. There are sufficient modes in which the internal business, if not already taxed in some other way, may be subjected to taxation without an imposition of a tax which covers the entire operations of the company."

And in the syllabus in the same case the court lay down this principle:

"A general license tax on a telegraph company affects its entire business, interstate as well as domestic or internal, and is unconstitutional."

The Kansas act under consideration is a general regulating act. No attempt is made by its terms to restrict its application to feed bought, sold, paid for and delivered wholly within the State of Kansas, or to yarding wholly in that State.

In *Smyth v. Ames,* 169 U. S. 466-452, Mr. Justice HARLAN, speaking for this court, remarked:

"It is only rates for the transportation of persons and property between points within the State, that the State can prescribe; and when it undertakes to prescribe rates not to be exceeded by the carrier, it must do so with reference exclusively to what is just and reasonable, as between the carrier and the public, in respect of domestic business. The argument that a railroad line is an entirety; that its income goes into, and its expenses are provided for out of, a common fund; and that its capitalization is on its entire line, within and without the State,—can have no application where the State is without authority over rates on its entire line, and can only deal with local rates

and make such regulations as are necessary to give just compensation on local business."

All of this applies to this case.

Merely because the Stock Yards Company is a corporation of Kansas, the Attorney-General contends that the act of March 3d, 1897, regulates its charges and prices in the State of Missouri, the same as if the hay and grain sold in that State and the yarding had in that State were transactions in Kansas.

If the perpetual injunction prayed for is not granted upon the pleadings and proof as to the hay and grain sold and paid for in Missouri, and the yarding of the company in that State, then the Attorney-General may in a single day commence innumerable civil and criminal prosecutions involving transactions in the State of Missouri, that will harass, annoy, cripple and almost confiscate the business of the Stock Yards Company. The company and its stockholders would be deprived thereby of their property without due process of law,—indeed, without any law regulating the transactions referred to in the State of Missouri, and would be denied in Kansas the equal protection of the laws.

THIRD POINT.

THE FINDING OF THE MASTER AND THE COURT BELOW OF THE VALUE OF THE PROPERTY OF THE KANSAS CITY STOCK YARDS COMPANY, OWNED AND OPERATED BY IT FOR STOCK-YARDS PURPOSES, WAS FOUNDED UPON INCOMPETENT AND INSUFFICIENT TESTIMONY. THE PROPERTY WAS VALUED AS A DEAD STRUCTURE—NOT AS A UNIT OR SYSTEM, OR AS A LIVING AND GOING CONCERN.

It was recently decided by this court in the case of *San Diego Land & Town Co. v. City of National City*, that—

"The reasonable value of property, rather than its original cost, is to be taken as the basis of calculation in determining whether rates fixed under legislative authority constitute a fair compensation for the use of the property, so that the owners are not deprived of their property without due process of law." (Vol. 19, Sup. Ct. Rep. 804-811; No. 16, Adv. Sheets U. S. Sup. Ct. 861.)

In that case, Mr. Justice HARLAN remarked:

"The basis of calculation suggested by the appellants is, however, defective, in not requiring the real value of the property, and the fair value in themselves of the services rendered to be taken into consideration. What the company is entitled to demand, in order that it may have just compensation, is a fair return upon the reasonable value of the property at the time it is being used for the public."

Therefore, it was of supreme importance to the complainants in this suit that "the real value of the property used and operated by the Stock Yards Company" should have been prop-

erly ascertained by the Master. This was not done. He segregated the property in parts, and valued it as thus divided into parts: the personal property at $307,077.25; the structures and other improvements, apart from the real estate, at $1,480,000; the land, "divested of all improvements," at $3,600,626: aggregating $5,388,003.25.

(Findings Nos. 43, 44, 45 and 46, of Master, R. 77.)

He refused to report "the real value of the property" as a unit, or as an entirety, or as a plant designed for a specific object. Further than this, the testimony introduced upon the part of the Attorney-General as to the value of the property gave estimates thereof as if divided into separate parts, not as a whole, or as a system or plant. It was the contention of the appellants before the Master and in the court below that to ascertain the real value of the property of the Stock Yards Company, it should be treated and appraised as a unit, as a completed system of stock yards, with all of its important connections, and as a live, going concern. (R. 57.)

Adams E. Co. v. Ohio St., 165 U. S. 194; 166 U. S. 185-225.

National Water Works Co. v. Kansas City, 62 Fed. 853.

The Attorney-General denied the correctness of this rule, and insisted that "the real value of the real estate of the company is to be determined by considering it as a body of naked land, upon the open market, subject to purchase and sale for all purposes for which a demand may exist," and that the value of the only property of the company to be considered in this suit

is its physical property. The Master decided against our contention, and then, upon incompetent and insufficient testimony, reported the land, divested of all improvements, at $3,600,626 only. We contended before him and before the court below, and earnestly insist now, "that this is an unfair and an improper mode of reaching the value of the real estate or property of the company; that it destroys the plant as a living, going business, and then values its land and other property in detail, in parts, not as a whole or a completed system of stock yards."

Foster, J., in passing upon the preliminary injunction, noticed the palpable error of the Master in omitting two tracts of real estate, containing respectively 8.028 acres and 12.122 acres owned by the company, and therefore added to the valuation of the land as made by the Master, $126,140, making the aggregate value of the property $5,514,143, as appraised in separate parts only. (R. 862, 872.)

Thayer, J., in the opinion handed down at the time of rendering the final decree, assumed the real value of the property of the company used for stock-yards purposes, as fixed by the Master, at $5,388,003.25. (R. 944.)

In this connection, it ought perhaps to be said in justice to Thayer, J., that he handed down his opinion in a few days after hearing the arguments upon the Master's report, the exceptions thereto and the voluminous testimony on file, without having sufficient time to fully examine the same—evidently considering that the court below was merely a medium through which this case would reach this court. *He observed in his*

opinion that "The great importance of the questions involved in these cases will doubtless occasion an appeal to the Supreme Court of the United States, where they will be finally settled and determined," and of his own motion made an order "restoring and continuing in force the injunction heretofore granted," to be continued until the appeal should be heard and determined by this court." (R. 946.)

As before stated, it is admitted that the structures, buildings, and all other improvements, separate from the real estate, and without considering their value in combination and from use, (which ought to be recognized in estimating the real value of the property of the company,) are of the value of $1,480,000.

The principal witnesses called as experts by the Attorney-General to prove the value of the real estate used by the defendant company in its stock yards were E. S. Merrill (R. 605), C. D. Parker (R. 629), E. F. Allen (R. 657), R. E. Cable (R. 668), C. W. Whitehead (R. 692), and William S. Beard (R. 708). The Attorney-General interrogated the so-called experts as to the value of the various tracts of "naked land," about which they gave testimony. (R. 607, 630, 680.) Then again his inquiries would be, "How much is the land worth per acre?" (R. 631, 680, 694, 711.) At other times his inquiries would be, "What is the land worth per acre without respect to the improvements?" (R. 659.)

Upon cross-examination, E. S. Merrill, the so-called expert, testified as follows concerning tracts of land referred to by him in his direct examination:

"Q. What is the land worth in this tract, marked 'E,' concerning which you have testified, lying east of Water street, in its present condition, just as it stands to-day? A. I don't know.

"Q. Then, as I understand your testimony, you are not testifying about the value of the property as it stands to-day in its present condition? A. Not improved property.

"Q. You can answer that question by yes or no. You are not testifying of the value of 'E' as it stands to-day? A. No."

(R. 621.)

"Q. Now, then, in making up your value, with reference to the tract marked 'E,' you consider that as naked-acre property, without any improvements or without any business at all? A. Yes, sir.

"Q. That is the fact, is it? A. Yes, sir."

(R. 619.)

Upon cross-examination, C. D. Walker, the so-called expert, testified as follows concerning tracts of land referred to by him in his direct examination:

"Q. You don't know anything about the value of the use of that land for stock-yards purposes? A. No, sir."

(R. 632.)

"Q. If another stock yards company should come in, do you think it could procure as desirable a location in the bottom? A. I don't think it could."

(R. 636.)

"Q. Now state, if you can, what is the actual present value of the land for stock-yards purposes? A. I don't know."

(R. 645.)

Upon cross-examination, E. F. Allen, the so-called expert, testified as follows concerning tracts of land referred to by him in his direct examination:

"Q. Do you know the present value of the use of this land by the Stock Yards Company? A. What they are worth to the Stock Yards Company?

"Q. Yes, sir. A. No, sir."

(R. 666.)

"Q. In making your estimates of value, you were not influenced by the value of the use to which the lands were put by the company? A. No, sir.

"Q. Not at all? A. No, sir."

(R. 666.)

Upon cross-examination, R. E. Cable, the so-called expert, testified as follows concerning tracts of land referred to by him in his direct examination:

"Q. Have you sold any real estate in the vicinity of that tract? A. No, sir.

"Q. Have you bought any? A. No, sir."

(R. 679.)

"Q. You have never had any transactions of buying or selling property around there? A. No, sir."

(R. 679.)

"Q. What, in your opinion, is that tract 'E' worth just as it is to-day? A. For general purposes, or for the purposes for which it is being used?

"Q. For the purposes for which it is being used? A. Certainly, I could not answer that question.

"Q. You don't know? A. No, sir."

(R. 683-684.)

Upon cross-examination, C. W. Whitehead, the so-called expert, testified as follows concerning tracts of land referred to by him in his direct examination:

"Q. What is this property marked 'A,' 'B,' 'C,' 'D,' and 'E' worth for stock-yards purposes? A. I don't know.

"Q. What is the value of this property for railroad purposes? A. I don't know.

"Q. What is the value of this property for packing-house purposes? A. I don't know anything about the packing-house business.

"Q. What would be the value of that property for packing-house purposes? A. I have stated, I believe, that I don't know."

(R.696-697.)

Upon cross-examination, the so-called expert William S. Beard testified as follows concerning a tract of land referred to by him in his previous examination:

"Q. Have you had any transactions of purchase or sale of lands in the vicinity of 'C' in the last five years? A. No, sir.

"Q. Have you had any conversations with anybody who did have transactions in the purchase and sale of lands in the vicinity of 'C' within that time? A. Yes, sir.

"Q. With whom did you have any such conversation? A. Just now I could not name anybody but Mr. McAlpine, I think.

"Q. Have you had any conversation with him in the last five years? A. No; that was more than five years ago.

"Q. Do you know of any person with whom you have talked who has bought or sold property in the vicinity of 'C' within the last five years? A. I don't think I could name anyone."

(R. 710-711.)

Afterwards, Mr. Beard said that he had condemned rights of way through the premises within five years, one within five years and the other within six years, (previous to the time of giving his testimony.) (R. 710.)

Mr. Beard was objected to by the complainants below upon the ground that he was not qualified as an expert to give testi-

mony in regard to the land. This objection was overruled. (R. 710-711.)

The testimony of Mr. Whitehead as to the value of land per acre was objected to by the complainants, as being incompetent, irrelevant and immaterial, and also because the witness was not qualified to answer. The objections were overruled. (R. 964.)

Mr. Cable was objected to for incompetency as an expert by the complainants, but the objection was overruled. (R. 679.)

Upon cross-examination, the solicitors of the complainants asked Mr. Allen the following question:

"Q. Mr. Allen, assuming that the value of the improvements on the 139 acres concerning which you have been testifying is $1,600,000, are you able to state what that property is worth for use by the Stock Yards Company?"

This was objected to on the ground that it was incompetent, irrelevant and immaterial, and the objection was sustained. Thereupon, the solicitors of the appellants offered to prove by this witness that he "did not know the value to the Stock Yards Company of tracts A, B, C, D and E, about which he had testified." This was held incompetent, and the testimony was not admitted.

The testimony of Mr. Parker was also objected to, and the objection overruled. (R. 631.)

The Attorney-General did not prove or offer to prove by any witness introduced by him the value of the property of the Stock Yards Company as a unit, or a completed system, or as an operated plant, or as a living, going concern. Therefore, we

filed our motion to strike out all of the testimony of the so-called experts introduced by the Attorney-General, valuing the property of the Stock Yards Company used for stock-yards purposes in segregated parts only, and the real estate "as a body of naked land," destitute of improvements. (R. *1619.*)

This was overruled, and the Master in his report valued the land "as divested of all improvements," and also all other property of the company, by segregating the same into parts and placing a value on each segregated part. (R. 77.)

In our exceptions to his report, we particularly called the attention of the court below to the fact that the Master had not regarded the property of the Stock Yards Company as a unit, or as an entirety, or as a plant designed for a specific object, and insisted then, as we insist now, that the value of the property should have been estimated not in parts, but as a whole with its important connections. (R. 852.) 860.

The findings of the Master as to the real value of the property of the Stock Yards Company which have been followed by the court below in the decree rendered, and in the opinion handed down by THAYER, J., should be set aside, because the Master and the court below passed upon the value of the property upon incompetent and insufficient evidence. The findings and judgment rendered are clearly in conflict not only with the weight of the testimony, but with all of the competent testimony. This will be referred to hereafter.

Such testimony as we have referred to and commented upon must be rejected by this court in the consideration of this case

upon this appeal, because the same was irrelevant. It did not prove the reasonable value of the property of the Stock Yards Company, nor furnish any intelligent basis upon which the real value of all the property could be determined.

Where property has been improved for carrying on an especial business, and such business in fact enhances the value of the site, this fact may be considered in estimating the actual or market value.

The inquiry should be what, for its availability for valuable uses, the property is worth. Lands or other property must be valued in the market for the uses for which they are applied or can be applied. The inquiry in this case must be, What is the stock-yards property worth in the market, viewed not only with reference to the uses to which it is at the time applied, but with reference to the uses to which it is plainly adapted? In this case, the adaptability of the property in controversy for stock-yards purposes is an important circumstance, which the stockholders have the right to insist upon as an element in estimating the value of the lands and other physical property of the company.

Little Rock & F. S. R. Co. v. McGehee, 41 Ark. 202; 20 Am. & Eng. R. R. Cases, 82.

Mississippi & Rum River Boom Co. v. Patterson, 98 U. S. 403.

King v. Minneapolis W. R. Co., 32 Minn. 224; 17 Am. & Eng. R. R. Cases, 93.

In the last case, it was said that "When property is taken for public uses, the owner is entitled to its market value for the use to which it may be most advantageously applied, and

for which it would sell for the highest price in the market; that any evidence is competent, and any fact is proper to be considered, which legitimately bears upon the market value of the property; and that where the property has been improved for a special purpose, for which it is especially suited, (as in this case, for the manufacture of plows,) if the fact that the business has been thereon established and in operation has enhanced the market value of the property as a site for carrying on such business, it is proper to take this fact into consideration." The court said:

"We think it may be stated as elementary that a person is entitled to the fair value of his property for any use to which it is adapted, and for which it is available, and for which it may be sold. He is entitled to the value of his property for any use to which it may be applied, and for which it would ordinarily sell in the market, whether that use be the one to which it is presently applied or some other to which it is adapted. It is, we think, equally true that any evidence is competent and any fact is proper to be considered which legitimately bears upon the question of the marketable value of the property. In this case, evidence was introduced tending to prove that the fact of a business having been established and carried on on the premises for so long a time materially increased the market value of this property. If this was the fact, it was competent to prove it; and, if proved, we cannot see why it was not proper to take into consideration in estimating the value. Who can say that this circumstance would not affect its value—that is, what a purchaser would ordinarily be willing to pay? *When we speak of the market value of property as being what purchasers generally would pay for it, we do not mean what men would pay who had no particular object in view in purchasing and no definite plan as to the use to which to put it.* The owner has a

right to its value for the use for which it would bring the most in the market. This property was expressly built for a plough factory, and was especially suited for such use; and it is not unreasonable to suppose that a purchaser would give more for it than he would if the business had been suspended for a time, or had never been established there."

The Master, in attempting to give an estimate of the value of the property of the Stock Yards Company, has wholly ignored the controlling decisions that "property improved and used for a special business must be valued in the market for the use to which it is at the time applied, (if that is the most available use,) or with reference to the use to which it is plainly adapted"; that the property of a corporation like the Stock Yards Company must be regarded in the aggregate as a unit and entirety, as a plant designed for a specific object, and its value cannot be estimated in parts, but must be taken as a whole.

Adams Express Company v. Ohio State, supra.

Mr. Chief Justice FULLER *observed in that case: "The unit is a unit of use and management." He further remarked: "There is the same unity in the use of the entire property for the specific purpose, and there are the same elements of value arising from such use."*

As Mr. Justice BREWER aptly says in the same case:

"Whenever separate articles of tangible property are joined together, not simply by a unity of ownership but in a unity of use, there is, not infrequently, developed a property, intangible though it may be, which in value exceeds the aggregate of the value of the separate pieces of tangible property."

The additional value created by the connections made and

now existing between the plant and the several railroads having connections, terminals and switches in and about the stock-yards, and with the several beef- and pork-packing establishments communicating with and adjoining the plant, and including the contracts, arrangements and connections with the Stock Yards Company of such railroads, packing establishments, and the exporters and buyers of live stock engaged as dealers in the purchase of live stock at the market created and maintained by the Stock Yards Company, which actually supply and increase its earnings, is not represented by the valuation of the property by the Master or the court below.

The Master in his report valued the present property of the Stock Yards Company as a dead structure, not a living and going business. This ought not to have been done.

National Water Works v. Kansas City, supra.

No more reason is perceived for limiting the valuation of the property of the Stock Yards Company to personal property, structures, pens, fences, buildings, viaducts, and other improvements, and the naked land, than that of railroad, telegraph, sleeping-car and express companies to road-beds, rails and ties, poles and wires, cars, wagons, horses, lands, and buildings. As to all such corporations, the valuation as decided by this court, includes the proportionate part of the value resulting from the combination of the means by which the business is carried on, "a value existing to an appreciable extent throughout the entire domain of operation."

Adams Express Co. v. Ohio State, supra.

Sanford v. Poe, 69 Fed. 546.
State v. Jones, 51 Ohio State, 492.

Therefore, the Master destroyed the value of the plant of the Stock Yards Company by dividing it into parts, as personal property, as improvements on its real estate, and as naked real estate, and after thus destroying such plant, unjustly fixed the value of the property at $5,388,003.25, without regard to its railroad and packing-house connections,—being about one-half of the real value of the property necessarily used for stock-yards purposes.

If the testimony of the so-called experts introduced by the Attorney-General had been supplemented by further testimony as to the real value of the property of the Stock Yards Company as a unit or completed system, then perhaps the testimony offered by him might have been worthy of some consideration, but the necessary supplemental testimony was not presented upon the part of the Attorney-General.

The court below followed the improper valuation of the property made by the Master, and as this valuation is not only against the weight of the testimony, but against all of the testimony competent to be considered in fixing the real value of the property of the Stock Yards Company as a unit or completed structure, the valuation made by the Master and the court below must be set aside, and a new valuation be given to the property by this court, as the testimony contained in the record demands and justifies.

The real value of the property will next be considered by us in the examination of the testimony.

FOURTH POINT.

THE REAL VALUE OF THE PROPERTY OF THE STOCK YARDS COMPANY IS FROM $9,000,000 TO $10,000,000.

It appears from the testimony that the reproduction of the plant of the Stock Yards Company at the present time would cost *"anywhere from eight to ten millions of dollars."* (R. 194.)

This is the testimony of Charles F. Morse, the Vice-President and General Manager of the company. He is a gentleman of lofty character, great executive ability, and intimately acquainted with the financial affairs and the business interests of the company. He has been connected with various companies operating stock yards in Kansas City since 1879, and has been the General Manager of the Stock Yards Company since it commenced active operations, on January 1st, 1884. (R. 183-186.)

It was said by Mr. Justice BREWER, speaking for the United States Circuit Court of Appeals of the Eighth Circuit, in *National Waterworks Co. v. Kansas City,* 62 Fed. 853:

"Nor would the mere cost of reproducing the waterworks plant be a fair test, because that does not take into account the value which flows from the established connections between the pipes and the buildings of the city. It is obvious that the mere cost of purchasing the land, constructing the buildings, putting in the machinery and laying the pipes in the streets,—in other words, the cost of reproduction,—does not give the value of the property as it is to-day."

(See page 865.)

This language of the learned Justice is particularly applicable to the value of the plant of the Stock Yards Company, in view of the connections existing between its plant and the several railroads having connections, terminals and switches in and about its yards, and between the several beef, mutton and pork-packing establishments communicating with and adjoining the yards, including the contracts, arrangements and connections of the company with the railroads taking shipments, the exporters and buyers of live stock. Mr. Morse also testified:

"Q. State now what amount of actual money has been put into the stock yards and improvements. A. You mean the cash expenditures?

"Q. Yes. A. I will answer the question.

"Q. State the actual money. A. $6,137,398—the land and the improvements and the cash inventories of feed, etc., in addition to the land and the improvements.

"Q. In addition to the land and improvements which you have, just state what other properties the company has for its use, without going into detail. A. It has always on hand large stocks of hay and grain, horses, carts, wagons, harness, tools, hose, office furniture, and all kinds of supplies; everything that is used in any way about the yards,—lumber in large quantity usually, fence posts; usually have a considerable quantity of paving-brick.

"Q. What do those items amount to? A. On the 31st of December, 1896, to $315,377.25.

"Q. Your bank account—where is that kept? A. Well, we keep a considerable balance here always—have to; and we keep an account in Boston, too—keep a considerable amount there. We draw on it if needed from time to time.

"Q. Who is the financial agent in Boston? A. Charles Merriam."

(R. 193-194, 318.)

George T. Williams constructed for the Baltimore & Ohio Railroad Company, stock yards at Richmond, Indiana; was connected with the West Madison Street yards in Chicago in 1855 and 1856; was the cashier and bookkeeper at the Lake Shore yards in that city in 1857, and the secretary of the Union Stock Yards & Transit Company, of Chicago, for twenty-eight years; at times he assisted the superintendent in his duties, and in the absence of the president attended to his business. (R. 433-434.)

Mr. Williams testified that from his knowledge of the Kansas City Stock Yards, the value of its property, "considered as a unit or entirety, as a completed system of stock yards, and as a going concern, assuming the tangible property to be worth from $5,000,000 to $7,000,000" is *"three or four million dollars over its capitalization."* (R. 440.)

Donald McNeal Palmer, who has been the general manager and superintendent for the last fourteen years of the Union Stock Yards at St. Louis, Missouri, testified that, assuming the physical property of the Kansas City Stock Yards Company was worth from $5,000,000 to $7,000,000, from his knowledge of the business, the *"plant would be worth from nine to twelve million dollars."* (R. 450, 453.)

William N. Babcock, who has been engaged in the stock-yards business for eight years, and is the general manager of the stock yards at Omaha, Nebraska, testified that the value at the present time of the plant of the Kansas City Stock Yards Company, considered as a unit or entirety, as a system

of stock yards and as a going concern (assuming the value of the tangible property to be from five to seven millions of dollars), is *"at least thirty-three and one-third per cent. more than that."* (R. 466, 471.)

This testimony, as we read the record, is uncontradicted. Clearly, the real value of the stock yards is over $9,500,000.

(See also the testimony of Harry P. Child, the Assistant General Manager of the Stock Yards Company. R. 178.)

THE AMOUNT FOR WHICH THE STOCK OF A CORPORATION CAN BE BOUGHT AND SOLD IS THE REAL VALUE

In view of the decisions of this court in *Adams Express Company v. Ohio State*, 165 U. S. 194-255, and *Adams Express Company v. Ohio State*, 166 U. S. 185-225, it is important to ascertain the amount for which the stock of the Stock Yards Company can be bought and sold.

The Master reported that there have been frequent market quotations of the stock in Kansas City and Boston, which have ranged from $110 to $141 per share. *The last quotation, in January, 1897, was $132 per share.* (R. 78.)

Mr. C. F. Morse testified *"that the average value of the stock in 1896 was $136 a share."* (R. 344, 314.)

He also testified:

"A. The sales of stock during 1896 were from $134 to as high as $141. They varied a little, month by month.

"Q. What would you say was the average market value of the stock during that period? A. Well, in January, 1896, the market value was from 140 to 141; in March of the same year it was from 139½ to 140½; April, 139½ to 141; June, 135 to

137; July, 134 to 137; November, 132 to 135; January, 1897, the last figures of which I have any knowledge, 133 to 134; from then until March I have no quotations.

"Q. Have you calculated what the average would be prior to March 12, 1897? I think it would average somewhere about 136 to 137; I haven't made any exact figures, but the lowest mark was, for a short time, 132 about election time, but for the greater part of the time it was about 137.

"Q. Do you know of the market value during each of the times you have testified about? A. Yes, I know of sales along from time to time."

(R. 763.)

He further testified:

"By the MASTER: I did not catch that answer that the Colonel had given to Mr. Hite. If that is true, then on the 12th day of last March the market value of the stock which had been issued by the company was $136 per share of $100. A. I think that would have been true—possibly not on the 12th of March, but at any time for twelve months before the 12th of February. There were no sales that I know of from February 1st to March 12th. For twelve months prior to February 1st it ranged from 135 to 140, and I don't believe the stock could have been bought as an entirety for less than that, and, according to the usual experience in such cases, it would have cost more. That no one would have sold any considerable amount for less than $136, I feel absolutely sure.

"Q. You think the entire stock could have been sold at that rate at that time? A. Yes, sir.

"Q. And the entire plant could have been sold at that time for in the neighborhood of nine and a half millions? A. Yes, sir. I will give you an instance why I think that is so: A year or so before that time there was an effort made by parties, claiming to represent a foreign syndicate, who came here and made a careful investigation of the plant, of its capacity, and the amount of business it was doing, and those gentlemen, who

were to take charge, were going to recommend the purchase of the plant at that time at $125 a share, as the price they could get the syndicate to pay. That was suggested, and I know of a great many stockholders who did not listen to it at all; so I gather from that that $125 a share would not have tempted them at all."

(R. 354.)

(See also testimony of George T. Williams, R. 433; Donald McNeal Palmer, R. 450; William N. Babcock, R. 466; and Harry P. Child, R. 177-178.)

Mr. Justice BREWER observed in the case of *Adams Express Company v. Ohio State Auditor, supra,* that—

"The value which property bears in the market, the amount for which its stock can be bought and sold, is the real value. Business men do not pay cash for property in moonshine or dreamland. They buy and pay for that which is of value in its power to produce income or for the purpose of sale."

Within the foregoing authorities, the value of the property of the Kansas City Stock Yards Company, used and occupied by it in the transaction of its business as a completed structure or unit, including its franchises and good-will, its contracts, arrangements and connections referred to, and the plant or system as a going concern, this court must determine its value to be over $9,500,000.

The intangible property of a corporation, and its franchises exercised in connection with the tangible property which it holds, create a substantive matter of value. If the rule established by the Supreme Court be applied to the present value of the property of the Stock Yards Company, then the court must find its value to have been, during the year 1896, $10,020,480,

because at that time there was outstanding $7,368,000 of stock of the company, the market value thereof being $136 per share of $100 par value. There has been no change since Jan. 1, 1897, in the amount of the business, physical conditions, connections or efficiency of the plant of the Stock Yards Company, considered as an entirety and going concern. It was at the commencement of these suits, and is at this time, in the same condition practically as it was in 1896.

In February, 1897, after the session of the Legislature of Kansas for that year had convened, and after a bill had been offered to reduce the charge of yardage and the prices of feed in stock yards, the stock sold at $115 per share. If the value of the stock is calculated at $132, and $600,000 is deducted for outside holdings, the value of the property, used for stock-yards property, would be $9,115,000. The report of the Master that the value of the good-will or business of the Stock Yards Company is "about $780,000," is unfair and unjust. The value of the good-will, according to the evidence, must be estimated at from $2,000,000 to $3,000,000 or more.

Testimony of C. F. Morse, R. 194.
Testimony of H. P. Child, R. 176-178.
Testimony of George T. Williams, R. 440.
Testimony of W. N. Babcock, R. 466, 471.
Testimony of Donald M. Palmer, R. 450-453.

That good-will is the subject of value and price, see—

14 American Law Register, N. S., 8, art. "Good-will."
Wedderburn v. Wedderburn, 28 Beav. 84.
Hitchcock v. Coker, 6 Ad. & Ellis, 438.

In *Succession of Journe*, 21 La. Ann. 391, it appears that in New Orleans the public market-stalls are leased out by the city through an officer called the "farmer"; that there exists a custom of transferring by consent, generally of the farmer, the use of market-stalls, and with that transfer the lessee of the stall sells its good-will, which is that run of custom which the transferrer has attained from the patronage of his friends and the reputation he has acquired. It was held that the administratrix of a deceased owner of such a stall was chargeable on her inventory with the sum for which, after her husband's death, the good-will of his stall had been sold.

It is said in Cook on Stock and Stockholders, § 20:

"A corporation may receive in payment of its shares of stock any property which it may lawfully purchase. In general, it may receive any consideration which is suitable and applicable to the purposes for which the corporation was organized. A railroad corporation may receive payment in contract work, right-of-way, or in any kind of material or labor applicable to its construction. *A manufacturing corporation may receive payment in the good-will of a business or the stock in trade.* Land may be taken in consideration when the corporation would be allowed to purchase the same. Promissory notes may also be taken under the corporate power of giving credit and extending the time of the payment of debts."

See, also, as deciding that good-will is property the same as money or personal or real property, *Washburn v. National Wall Paper Company*, U. S. Circuit Court of Appeals, 2d Circuit, vol. 14, Nat. Corp. Rep. (June 17, 1897,) pages 511-513;

State v. Jones, 51 Ohio State, 492, 512, 513; *Adams Express Co. v. Ohio State, supra; Sanford v. Poe, supra.*

It therefore appears from the testimony that the value of the property of the Stock Yards Company, which the Master fixed at $5,388,003.25, is nearly twice that sum, being between $9,000,000 and $10,000,000.

The following statement in the opinion of THAYER, J., to wit—

"It is fair to infer that a large amount of stock has been issued by the company, not so much with reference to the actual value of its physical property, as with reference to the income which it could be made to produce, and the dividends it could be made to pay"—

is both incorrect and misleading. (R. 944; 82 Fed. 854.)

Mr. Morse testified: "There has been no stock issued except it represented the actual cash investment in money, with the exception of $1,437,882. That amount represented the increased value of the land." (R. 215-216.)

THAYER, J., in his opinion, stated that—

"A prime factor in determining whether the prescribed rates are reasonable or confiscatory, is the valuation which shall be placed on the property of the Stock Yards Company which is used for the purpose of yarding and feeding stock." (R. 943.)

But he added the following:

"With reference to that subject, it may be said that different methods of estimating the value of property may properly be employed, when it is valued for different purposes." (R. 943.)

If under the Adams Express cases property of corporations may be assessed and taxed as therein declared by this court,

it ought not to be asserted successfully that the real value of the property of the Stock Yards Company is less than that at which the State of Kansas might assess it for taxation. It is inconceivable that the real value of the property of a corporation should be valued less than the property might be assessed for taxation. That the taxing authorities have not assessed the property of the Stock Yards Company in accordance with the statutes of the State, does not militate against our argument, or tend in any way to lessen the real value thereof. It is admitted that the personal property of the Stock Yards Company is $1,480,000. The real estate of the corporation is not required to be listed for taxation by the company. That is a duty wholly performed by the tax assessor. If the tax assessor values property for taxation at a sum very much less than its actual value, or omits all valuation, the owner is not responsible. He performs his duty when he pays the taxes assessed.

In this connection, we call the attention of the court to finding No. 43 of the Master, page 77 of the record, fixing the value of the land, divested of all improvements, used by the Stock Yards Company for stock-yards purposes only, at $3,600,626, which amount seems to have been accepted as correct by the court below. This finding of the Master as to the value of the naked land is against the great weight of the testimony. The Master in the finding remarked that the witnesses testifying concerning the value "of the real estate owned and used by the defendant company for stock-yards purposes" are *"of appar-*

ently equal intelligence, fairness, and means of information." (R. 72.)

Yet the Master, in making his finding of the value of the naked real estate, ignored the testimony of twelve disinterested expert witnesses who testified on the part of the appellants. Their names are as follows:

J. W. Dalton, R. 515.
J. W. Ferguson, R. 480.
R. J. Hinton, R. 575.
T. J. Haire, R. 594.
Albert Marty, R. 562.
E. H. Phelps, R. 566.
C. W. Schiller, R. 580.
J. W. Tourtellot, R. 494.
J. B. Welsh, R. 501.
C. K. Wells, R. 524.
A. A. Whipple, R. 591.
D. S. Young, R. 527.

The testimony of these witnesses fixes the value of the tracts of land referred to in said finding at the following prices per acre:

	Main Yards in Missouri, 41.708 acres.	*Main Yards in Kansas, 40.659 acres.*	*Quarantine Yards, 13.458 acres.*	*North Yards, 14.900 acres.*
	Per acre.	Per acre.	Per acre.	Per acre.
J. W. Dalton	$62,500	$62,500	.....	.....
J. W. Ferguson	.....	.....	.....	$32,500
R. J. Hinton	65,000	.....	.....	55,000
T. J. Haire	62,500	.....	.....	.....
A. Marty	50,000	50,000	.....	40,000
C. F. Morse	56,000	56,000	$12,000	30,000
E. H. Phelps	60,000	55,000	16,000	40,000
C. W. Schiller	.....	.....	.....	47,500
J. W. Tourtellot	55,000	.....	.....	34,200
J. B. Welsh	60,000	40,000	15,000	30,000
C. K. Wells	.....	.....	.....	31,250
A. A. Whipple	60,000	37,500	15,000	25,000
D. S. Young	55,000	75,000	16,500	50,000
Average	$58,600	$53,714	.....	$37,768

The testimony introduced at the hearing before the Master, concerning the value of the land for stock-yards purposes, conclusively established the value at about $6,000,000. The great preponderance of the testimony given before the Master, even as to the actual market value and selling price of the land described by him in the finding, divested of all improvements, was the sum of $5,277,213.

The Master, in reaching his estimate of the value of the naked land owned and used by the Stock Yards Company for stock-yards purposes, wholly omitted to value a tract of land, shown on Exhibit Z as cut by James street, of the actual market value of about $65,000, and of a tract of land marked on Exhibit Z as "D," of the actual market value of about $41,000, and also of a tract of land shown on Exhibit Z as a part of "E," of the actual market value of more than $85,000, and also of seven small tracts of land, designated on Exhibit Z as "e," then of the actual market value of more than $85,000. Two of the omitted tracts, valued at $126,140, FOSTER, J., added to the property actually used by the company. (R. 872.)

The Master reported in the finding the value, divested of all improvements, of the main yards in Missouri, consisting of 41.708 acres, at $45,000 per acre, aggregating $1,876,860. He should have reported the value of the tract, divested of all improvements, at not less than $58,600 per acre, aggregating $2,369,014, inasmuch as fourteen witnesses, whom the Master in the finding states to be of "equal intelligence, fairness, and means of information," testified respecting the value of such

tract, divested of all improvements. The average deducible from the testimony of ten of these witnesses is $58,600 per acre, aggregating $2,369,014. The Master also reported in the finding the value, divested of all improvements, of the main yards in Kansas, consisting of 40.659 acres, at $30,000 per acre, aggregating $1,219,770. He should have reported the value of this tract, divested of all improvements, at not less than $53,714 per acre, aggregating $2,183,968, inasmuch as thirteen witnesses, whom the Master states to be of "equal intelligence, fairness, and means of information," testified respecting the value of such tract, divested of all improvements. The average deducible from the testimony of seven of such witnesses is $53,714 per acre, aggregating $2,183,968.

The Master in the finding reported the value of the north yards, consisting of 14.9 acres, at $23,000 per acre, aggregating $342,500. He should have reported the value of the tract known as the north yards, divested of all improvements, at not less than $37,768 per acre, aggregating $562,748, as seventeen witnesses, whom he states to be of "equal intelligence, fairness, and means of information," testified respecting the value of the tract, divested of all improvements. The average deducible from the testimony of eleven of such witnesses is $37,768 per acre, aggregating $562,748.

The Master states that the witnesses, who testified concerning the value of such lands, divested of all improvements, had equal means of information, and in reaching the conclusions in the finding, he gave greater weight to the testimony of the

witnesses produced by the Attorney-General,—when the testimony of E. F. Allen, W. S. Beard, R. E. Cable, E. S. Merrill, C. D. Parker and C. W. Whitehead was wholly incompetent and entitled to no weight whatever, for the reason that each of the witnesses admitted that he did not know the market value of such land or any of it for stock-yards or railroad purposes.

If all of the property of the Stock Yards Company is valued at the amount for which its stock could have been bought and sold before the enactment of the act of March 3d, 1897, then the property belonging to the company, not used by it in the operation of its yards, should be deducted from the real value of the property used for stock-yards purposes only. The court below determined this sum to be "upwards of a million dollars." (R.943.)

The Master, in his report, fixed the amount at $1,200,000 (R. 75-76), but if this amount were deducted from $10,021,-364, the value of the stock in 1896 at $136 per share of $100 per share, the real value of the property of the company used by it in the operation of its yards would be $8,800,364. If the value of the stock is calculated at $132, and $1,200,000 is deducted for outside holdings, the value of the property used for stock-yards purposes would be $8,515,000; but the Master erroneously, and without any warrant therefor from the testimony, includes in his schedule of property not used for stock-yards purposes, a certain tract of land shown on Exhibit Z as a part of the Graham tract, cut by James street, value about $50,000;

when the Master should have found that by reason of the fact that this strip of land is used for the purpose of upholding the superstructure of a stock viaduct leading to the Armour Packing Company's plant in that vicinity, it is a necessary and essential part of the stock yards and a valuable and important connection between the Stock Yards Company and the Armour Packing Company.

The Master also reported that 8.028 acres on the west side of the Kansas river, designated on Exhibit Z as "D," is not used for stock-yards purposes. He should have reported that this tract, of the value of about $45,000, is used daily by the Stock Yards Company as a dumping-ground for the disposal of offal and other refuse matter from the quarantine yards, the testimony showing that it was necessary for the company to have special dumping-grounds to dump refuse from the infected or quarantine stock kept in the yards adjacent to this ground, and that the company, under the Government regulations pertaining thereto, would not be permitted to use a common dumping-ground to dump refuse from the quarantine yards. (R. 166-171.)

The Master reported that 12.122 acres lying west of the property designated as "E," on Exhibit Z, is not and was not used by the company for stock-yards purposes. He should have reported that a large part of the tract is daily used by the company as a dumping-ground, and that the land was absolutely essential to the economical operation of the yards, and that if the land had not been provided, the annual expense

of having the refuse from the main and other yards, lying on the east side of the Kansas river, disposed of, would have been approximately $8,000, and this annual expenditure is saved to the company by having this parcel of land, and using it for such purpose. (R. 229, 166-171.)

The Master reported that the seven small tracts north of the property described in Exhibit Z as "E," are not used for stock-yards purposes. He should have reported that these tracts of land, of the value of about $85,000, were purchased by the defendant company for the purpose of rounding out the north yards, in order to make connections with the packing-house establishments and railroads.

The Master reported that railroad live-stock cars owned by the Stock Yards Company, of the value of $8,000, are not used for stock-yards purposes. He should have reported that such cars were not used at present, but that they were owned by the company and in fit condition to be used at any time upon its tracks in its yards, whenever such use might become necessary by reason of any exigency of the business.

The Master reported in the finding that cash and credits to the amount of about $400,000 are not used by the Stock Yards Company for stock-yards purposes, thereby intending to convey the idea that the result of the Stock Yards Company's operations was the accumulation of surplus cash and credits of about $400,000. He should have reported to this court that the net surplus on hand in cash by the company on the 1st of January, 1897, was $188,000, and that this surplus was the accumula-

tion of the excess of gross earnings over disbursements for a period of years, and that it was necessary for the company to have on hand considerable cash at all times to properly carry on its business. (R. 318.)

The Master in the finding valued all the real and personal property mentioned therein not used for stock-yards purposes at about $1,200,000, when he should have reported that the value of all the property owned by the company not used for stock-yards purposes was $565,425. (R. 849.)

Therefore, upon the testimony, the total valuation of all the real and personal property of the Stock Yards Company not actually used by it in the operation of its yards on December 31st, 1896, was $565,425 only,—in round numbers less than $600,000. (R. 318, 316, 849.)

As the Master included in the $1,200,000 for outside property two tracts of real estate containing respectively 8.028 acres and 12.122 acres, of the value of $126,140, which should be embraced as a part of the plant (R. 872), that sum should be deducted from the $1,200,000.

Again, as the Master deducted only $5,591.53 and $6,007.45, aggregating $11,598.98, for income of outside property, it is evident that the property regarded by him as disconnected from the stock-yards business was not of the real value of $1,200,000.

In estimating the value of the property of the Stock Yards Company, the Master improperly complicated the affairs of the Stock Yards Company, which commenced active business on January 1st, 1884, with that of prior corporations engaged

in yarding cattle at Kansas City. (R. 61.) He refers to the incorporation of the company December 10th, 1883, as a reorganization, and he did not distinguish between the separate corporations, *"but treated them as being one and the same."* (R. 62.)

He further complicated the value of the property in his findings, by reciting the sales of lands to stock-yards corporations existing prior to December 10th, 1883. (R. 62-63.) And also by tabulating the capital stock and other matters connected with corporations carrying on stock-yards business prior to that time. (R. 79.)

As the Kansas City Stock Yards Company was not incorporated until December 10th, 1883, and did not commence active operations until January 1st, 1884, the cost of property to prior corporations, the capital stock of such corporations, and the dividends declared by them, we deem wholly unimportant to the present controversy. Therefore, in this case, it is unnecessary to investigate prior corporations or their business affairs. The act of March 3d, 1897, attempts to regulate the rates and prices of the defendant Stock Yards Company,—not a prior company. The original purchase made by the defendant company from another stock-yards company on January 1st, 1884, was, as before stated, for $1,990,000, which was paid in stock to the stockholders of the other company, and the stock at that time was above par. The defendant company then purchased the property of the old company, as stated in the testimony (R. 216), and since the organization of the present Stock Yards

Company, all stock issued has been paid for in cash, or represented moneys expended from time to time for lands and improvements, or has been issued for the increased value of the lands of the company since the date of the purchase thereof. (R. 284.)

In any view in which the testimony may be considered, we think THAYER, J., erroneously concluded that the value of the property used for stock-yards purposes, as assessed by the Master, "is not unreasonable, considering the object for which such valuation was made." (R. 944.)

This conclusion is against all of the testimony. The facts do not justify any consideration of the original cost of the lands to prior corporations, or even to the defendant company, and very much of the statements and figures of the Master in his report, found on pages 79-80 of the printed record, has little application to the controversy before the court.

In the case of *Ames v. Union Pacific,* 64 Fed. 165, the amount of stock and bonds "was far in excess of the present value of the property."

Mr. Justice BREWER in that case remarked:

"No inquiry is open as to whether the owner has received gifts from the State or individuals, or whether he has managed the property well or ill, or so as to acquire a large fortune therefrom. It is enough that he owns the property, has the legal title, and, so owning, he must be paid the actual value of that property. If he has done any wrong in acquiring or using the property, that wrong must be redressed in a proper action therefor, and cannot be made a factor in condemnation proceedings. These propositions in respect to condemnation pro-

ceedings are so well settled that no one ever questions them. The same general ideas must control legislation of the kind before us. The value of the property cannot be destroyed by legislation depriving the owner of adequate compensation. The power which the Legislature has is only to prescribe reasonable rates, not any rates. That which is unjust cannot be reasonable, and when the strong arm of the Legislature is laid upon property, it must be so laid as to do justice to the investors."

This language applies with great force in the present case. We earnestly insist that the Stock Yards Company is entitled to the benefit of any appreciation in value, above the original cost and the cost of its improvements, in determining the real value of its property.

FIFTH POINT.

NET INCOME OF THE STOCK YARDS COMPANY.

In 1896 the Gross Earnings were $1,023,870.20. Total Disbursements Paid out of Earnings were $537,643.70, leaving Net Income from the Earnings for that year of $486,226.50.

Having ascertained from the testimony the real value of the property used for stock-yards purposes, it is important to inquire as to the amount of the net income of the Stock Yards Company under the rates existing prior to March 3d, 1897. The Master and the court below determined the gross income of the company and the net income from the results of the operation of the company for the year 1896. (R. 940-947, 69-71.)

From the gross earnings the Master deducted $11,598.98 as rent from outside property, and also $2,346.56 from the disbursements as taxes on outside property, and therefore he reported the net income less all of the disbursements, from the earnings of 1896, at $476,974.08. (R. 70-71.)

THAYER, J., in referring to income and expenditures for 1896, says:

"The gross income realized by the Stock Yards Company during the year 1896, which may be taken as representing its average gross income, was $1,012,271.22. The total expenditures of the company for all purposes during the same period amounted to $535,297.14, which would indicate a net income for the year of $476,984.08." (R. 944.)

The Master also reported that if the statutory rates had been

applied to the business of the company for 1896, and the disbursements for that year, which were paid from the earnings, were properly chargeable to the earnings, then the net income would have been $176,322.31 only. (R. 73.)

There ought not to be, in view of the stipulations of the parties to this suit, any difficulty in determining absolutely the net income of the company for 1896. In order not to burden the record with unnecessary testimony, the parties expressly agreed in writing as follows: "For the purpose of removing any question which may exist in regard to the manner in which the earnings of the Stock Yards Company were disbursed during the year . . . 1896 for operation, maintenance and extensions of improvements, it is agreed as follows:

"1896:

The gross earnings were $1,023,870.20.

From this amount there was expended, in addition to the $368,059.05 shown by the "profit-and-loss account" for that year, the following amount.. $176,394.60

This amount was disbursed for the following purposes:

For completion of the new Missouri addition to the Exchange building, begun in 1895.....$24,854.35

(This includes $386.08 for a new vault in the Kansas part of the building.)

For completing power plant, begun in 1895 ..... $5,950.56

On horse stable..... $220.77

(Expense of constructing wash-room to take the place of former one, including material and labor.)

On horse stable, H. & M. dep't..... $33.92

Amount forward..... $176,394.60

(Labor and painting.)

On mule stable, H. & M. dep't..... $831.12

(Constructing office rooms in the building.)

On horse and mule stable..... $1,541.18

(Taking out old front of Sparks's barn and rebuilding it about 25 feet further front on street line, making the building larger.)

For transit house..... $56.13

(Making additional windows.)

On hay and grain barns..... $4,276.95

(For moving one barn, enlarging it, and fitting it up, $600, and the rest for the erection of three new barns where there had been none before.)

On scale-houses and scales..... $6,228.77

(For completing two scale-houses and scales in Missouri extension and building two scales and scale-houses in the hog division on the north side and one in the sheep division on the north side—all new and original construction except the one in the sheep division on the north side, which took the place of a house which had become unfit for use.)

Sundry small buildings..... $1,163.91

(Of this amount about $700 was expended in rebuilding a worn-out train office which originally cost about $300, and which was inadequate for the business. The balance is for putting up new buildings, including a train office in the north yards, where there had been none before.)

Chutes and fences..... $24,892.56

(Fences in new yards in new Missouri extension.)

Drainage..... $2,416.09

Amount forward $176,394.60

(Construction of and laying new drainage-pipes in the north yards, taking the place of former drainage system there, the new ones being required in consequence of the different arrangements of the new water supply.)

Office furniture, new..... $1,052.44

Brick paving..... $75,169.87

(Of this amount $44,492.07 was expended for paving to take the place of paving in alleys, plank flooring worn out, and the rest, $30,677.80, was expended for paving the pens in the new Missouri extension.)

Railroad tracks, lifting-jack..... $7.42

Hog-sheds $4,420.65

(Portion of a large amount expended for rebuilding hog-sheds, which portion was estimated as a betterment over original cost of the former sheds, the new sheds covering an additional area equal to the capacity of eleven cars of stock.)

Sheep-sheds $12,541.71

(New sheep-sheds built in the north yards on the site of former cattle-pens.)

Viaducts $6,809.80

(Expended for an extension in the main yards of viaducts built in 1894.)

Water supply..... $3,926.40

(For pipes, hydrants, etc., to carry water to pens and new hog- and sheep-sheds in the north yards, necessitated in place of former water-pipes, etc., by rearrangement of the sheds.)

——— $176,394.60

This account is credited this year with the following items:

Amount forward		$176,394.60
Estimated value of material credited to "flooring cattle-pens—alleys," being old material taken therefrom	$6,489.43	
Horses belonging to company sold	294.00	
Wagons and carts sold	26.52	
		$6,809.95
Balance		$169,584.65

L. C. Boyle, *for Defendant.*
Albert H. Horton,
D. R. Hite, *for Complainants.*
Pratt, Dana & Black,
For Other Defendants, including K. C'y Stk. Yds. Co."
(R.89-91.)

Therefore, according to the written stipulation of the parties, the gross income in 1896 was $1,023,870.20, and the total disbursements for that year were $537,643.70. Thus it will be seen that the net income of the Stock Yards Company for the year 1896 amounted to $486,226.50 only. The company that year paid a six-per-cent. dividend, amounting to $429,160.50, leaving a surplus of ~~$44,105.50~~ $57,066.00. We contend that there should be no controversy on account of the written stipulations over the nature of the expenditures for 1896. The Attorney-General agreed that in addition to the $368,059.05, expended as shown by the profit-and-loss account for that year, the further sum of $176,394.60 was also expended "for operation, maintenance and extension of improvements." It is obvious that these expenditures in 1896 were necessary for the proper carrying on of the business of the company.

Mr. Justice BRADLEY said, in *Union Pacific v. United States*, 99 U. S. 402, that—

"'Net earnings' within the meaning of the law, are ascertained by deducting from gross earnings all ordinary expenses of organization and of operating the road, and expenditures *bona fide* made in improvements, and paid out of earnings, and not by the issue of bonds or stock."

To make the stipulation of the parties concerning the income and expenditures for 1896 more emphatic as operating expenses and *bona fide* expenditures made for improvements, paid from earnings, the further stipulation was made between the parties concerning the expenditures for five months of the year 1897. That stipulation, which should be considered in connection with the other written stipulation about income and expenses, is as follows:

"There was actually expended by the Kansas City Stock Yards Company during the first five months of the year 1897 for the following purposes the sum of		$217,324.08
For operating expenses, including labor, cleaning yards, office expenses, insurance, taxes, lost and damaged stock, and similar items		$151,102.24
For cost of maintenance, including the following items:		
Two toilet-rooms in Exchange bldg	$1,270.40	
One dynamo for power plant	552.80	
Changes in horse stable (Gould's)	42.53	
One office for commission merchant in large horse barn	250.27	
Construction of two mule barns No. 3	19,723.51	
Painting one hay barn	41.03	
Addition to horse shed to increase its capacity	248.72	

Amount forward		$151,102.24
Subdividing and changing pens in quarantine yards	$1,025.33	
Drainage for mule barns No. 3, above referred to	462.62	
Office furniture	6.50	
Horses purchased for company's use	171.00	
Paving around mule barns No. 3, above referred to	1,698.66	
Same	453.65	
Labor on switch (railroad tracks)	25.00	
Viaduct, quarantine yards	3,012.54	
Two approaches to viaducts in main yards	1,053.19	
Wagons and carts bought for company's use	165.00	
Water supply for mule barns No. 3	149.32	
Riprapping river-bank, main yards, to protect it from encroachments by river	869.77	
Also $35,000, being the amount paid to said company for land deeded to the Schwarzchild & Sulzberger Company in consideration of the immediate expenditure by said packing establishment of the sum of at least $100,000 in the enlargement of its plant sufficiently to consume about two thousand head of cattle more per week than it had theretofore consumed	35,000.00	
		66,221.84
Aggregate		$217,324.08

L. C. Boyle, *Defendant.*

D. R. Hite,

Solicitor for Complainants."

(R. 81-82.)

Therefore, we assert that the Attorney-General is now estopped by the stipulations referred to from any controversy over the expenditures in 1896 of $169,584.65. After these stipulations were agreed to and filed in the court below, it was unnecessary for the appellants to prove the yearly depreciation on the wooden structures and other improvements in the stock yards. We assumed then and insist now, that when the Attorney-General agreed that the expenditures made by the company of $66,221.84 during the first five months of 1897, as itemized in the stipulation filed August 24th, 1897, (R. 81-82,) were "cost of maintenance," and when he further agreed that the expenditure of $169,584.65 for 1896 as itemized therein was "for operation, maintenance and extensions of improvements," that it is too late to say that said expenditures, having been paid out of earnings and not by the issue of stocks or bonds, should not be charged to ordinary operating expenses. They should be treated under the stipulations as properly chargeable against earnings. We call attention to the fact that no bonds were issued for any of the disbursements for 1896, and the intimation by THAYER, J., in his opinion, that "In due season, the company would doubtless have capitalized the amount of said expenses by issuing stock therefor," is not supported by any testimony, and is contrary to all of the testimony. (R. 316, 317.)

"Everything of the kind [improvements and renewals] in the way of expenditures is put directly into the expense account." (Testimony of Mr. Morse, R. 238-239.)

In 1896 not only was the sum of $169,584.65 actually paid out of earnings, but no stock whatever was issued therefor; so that whatever might be said concerning previous expenditures of the same kind, and the impropriety of charging them against earnings, the case presented by the business of the company for 1896 is within the authorities on this subject. The company derived the money which it expended for maintenance and improvements from earnings, and from no other source, and these expenditures were made under the supervision of "a careful, wise, economical management" for the express purpose of keeping the property in a serviceable condition. And as said by Mr. Justice BRADLEY in *United States v. U. P. R. Co., supra, "We think that the true interest of the Government in this case is the same as that of the stockholders, and will be subserved by encouraging a liberal application of the earnings to the improvement of the works."*

In the *Reagan* case, 154 U. S. 362, it was contended that the expenditure of some $300,000 by the railroad company for "cost of road, equipment and permanent improvements" should not be charged against earnings as operating expenses, because there was included in this amount about $113,000 expended for new rails, stations, fences, furniture, masonry, grading, fixtures, bridges, and trestles; and it was doubtless urged upon the court in that case that those expenditures ought not to be considered, for the reason that they added materially to the value of the railroad. Mr. Justice BREWER indicates very plainly in the opinion that this was

wholly immaterial, and, as he said: "It goes without saying that in the operation of every road there is a constant wearing-out of the rails and a constant necessity for replacing old with new. And further, it being shown affirmatively that there were no extensions during that year, it is obvious that these expenditures were those necessary for the proper carrying on of the business required of the company."

The testimony of the General Manager of the Kansas City Stock Yards Company affirmatively shows that there were no extensions of the grounds in 1896, and that none are in contemplation. (R. 238.)

It was decided in *Southern Pac. Co. v. Board of Railroad Commissioners,* 78 Fed. 236, that—

"In ascertaining the cost of operating a railroad, with reference to determining the reasonableness of rates, the expenses of operation are not to be strictly limited to the cost of running trains, excluding all betterments, but the cost of reasonable renewals and improvements of road-bed, and equipment should be included in the operating expenses."

The Stock Yards Company, like all other corporations engaged in a similar kind of business, of necessity keeps a great many accounts, wherein the particular items which go to make up gross disbursements are recorded. It cannot be assumed that the ultimate fact, which it is apparent this court must ascertain, is to be seriously affected by the mere manner in which the books of the defendant company are kept. (*Reagan v. Farmers L. & T. Co., supra.*) What is in reality the amount of net income received by such a corporation, is the question,

and the act of the Legislature should neither be upheld, nor annulled by a mere matter of bookkeeping. The report of the Master indicates very clearly that the Stock Yards Company was in the practice of crediting its profit-and-loss account with the items which made up its gross income, and charging the same account with its running expenses only. The balance of this profit-and-loss account was not seriously taken by the Master, nor by the Attorney-General, as fairly indicating the net income. It became apparent to the Master, as well as to the parties, that large expenditures had been made by the Stock Yards Company out of its earnings which were not charged in the "profit-and-loss" account, and the question was immediately presented whether these expenditures should be added to the "running expenses" in that account in order to correctly determine the net income. In consequence of the opposite views entertained by the complainants and the Attorney-General respecting the propriety of these expenditures and the consideration of them as part of the "operating" expense, the stipulations referred to were formally made, which were intended by the parties, as shown by the language employed, to remove any question which might exist as to the amount of the gross income of the Stock Yards Company and its expenditures.

In view of the fact that the Master and the court below selected the business of the year 1896 for the purpose of comparison, it is unnecessary to discuss the correct method of ascertaining the net income for any other year.

But even if the stipulations of the parties concerning the dis-

bursements of the company for 1896 are wholly ignored, yet when the items which go to make up the disbursement of $169,584.65 are examined in the light of the authorities, it seems perfectly clear that the Stock Yards Company has not done anything unusual, and that the net income of that company for 1896 must be considered as that sum which remains after deducting from the gross earnings not only the mere running expenses of the plant, but also the charges detailed in the stipulation.

We refer to the language used by Mr. Justice BRADLEY in the *Union Pacific Case,* found on page 409, as follows:

"We are disposed to agree, therefore, with the judge who delivered the concurring opinion in the court below, that the 27th item of expenditure, as stated in the table of expenses in the 18th finding, entitled 'expenditure for station buildings, shops, etc.,' is a charge that may properly be made against earnings, since, as the fact is, such expenditures were actually paid therefrom, and were not carried to capital account."

It is clear that if the statutory rates had been in force at the stock yards in 1896, the result would have been a certain, positive, definite sum, because the gross income from the application of such rates is ascertainable to a mathematical certainty, and the amount of disbursements, except dividends, which were in fact made out of earnings, is ascertainable not upon any theory, but from the actual facts. It is unfair to assume a condition of affairs which did not exist during that year with reference to expenditures. An exact, definite sum was actually received by the defendant company during the

year 1896, and notwithstanding the sum disbursed during the same period is just as precise, definite and exact as to the amount of income, an attempt was made by the court below to exclude a large portion of such disbursements. It would be just as fair to exclude considerable sums from the income as mere adventitious receipts, as to exclude anything from the disbursements as mere adventitious expenditures. Moreover, we submit that no mere theory of the Master or court below should prevail against the actual facts, or against the clear, explicit and uncontradicted testimony of the competent, wise and economical managing officers of the company, whose opinions as to the necessity for such expenditures were unreservedly acquiesced in by the stockholders of the company, and against the conclusive fact that these opinions were crystallized into actual expenditures for purposes which, these officers testified, were essentially necessary to keep the plant in a serviceable condition.

The parties themselves have seen fit to employ certain language in their written agreements, and that language cannot be ignored in deciding this case.

The contention of the Attorney-General, as expressed by the Master's report, is not new. It has usually been presented in various forms by other State officers in cases where States have attempted to regulate the charges of corporations which it was alleged were engaged in business charged with a public use.

Mr. Justice McKenna had occasion to examine this question in the *Southern Pacific Railroad Co. v. Bd. of Railroad Com-*

missioners of California and others, reported in 78 Fed. Rep. 236. On page 238 of the reported case, in the 17th paragraph of the syllabus, Mr. Justice McKenna states the law upon this subject in the following language:

"*Held, further,* That in ascertaining the cost of operating a railroad, with reference to determining the reasonableness of rates, the expenses of operation are not to be strictly limited to the cost of running trains, excluding all betterments, but the cost of reasonable renewals and improvements of road-bed, track and equipment should be included in the operating expenses."

And on page 264, in the course of the opinion, the court proceeds as follows:

"The second ground of objection, that is, that to improvements and betterments, there will have to be considered—first, the abstract legality of such a charge; and, second, the competency of it under the leases. The abstract legality of such charge is established by the Reagan case. The same contention was made there, and a deduction of the sum of $302,085.77 was claimed to have been charged to operating expenses, whereas it was expended for 'cost of road, equipment and permanent improvements.'"

Mr. Justice Brewer, commenting on the claim in the Reagan case, said:

"Again, the sum of $302,085.77 appears in that table, under the description, 'cost of road, equipment, and permanent improvements, admitted to have been included in operating expenses,' and is added to the income as though it had been improperly included in operating expenses. But, before this change can be held to be proper, it is well to see what further light is thrown on the matter by other portions of the report.

That states that there were no extensions of the road during that year, so that all of this sum was expended upon the road as it was. Among the items going to make up this sum of $302,085.77 is one of $119,212.09 for rails, and it appears from the same report that there was not a dollar expended for rails except as included within this amount. Now, it goes without saying that, in the operation of every road, there is a constant wearing-out of the rails, and a constant necessity for replacing old with new. The purchase of these rails may be called 'permanent improvements,' or by any other name; but they are what is necessary for keeping the road in serviceable condition. Indeed, in another part of the report, under the head of 'renewals of rails and ties,' is stated the number of tons of 'new rails laid on the main line.' Other items therein are for fencing, grading, bridging, and culvert masonry, bridges and trestles, buildings, furniture, fixtures, etc." (*Reagan v. Farmers Loan and Trust Co.*, 154 U. S. 362.)

The opinion of Mr. Justice BRADLEY, on page 409 of *Union Pacific v. United States*, 9 Otto, 402, is as follows:

"Theoretically, the expenses chargeable to earnings include the general expenses of keeping up the organization of the company, and all expenses incurred in operating the works and keeping them in good condition and repair; whilst expenses chargeable to capital include those which are incurred in the original construction of the works, and in the subsequent enlargement and improvement thereof. With regard to the last-mentioned class of expenditures, however, namely, those which are incurred in enlarging and improving the works, a difference of practice prevails among railroad companies. Some charge to construction account every item of expense, and every part and portion of every item which goes to make the road, or any of its appurtenances or equipments, better than they were before; whilst others charge to ordinary expense account, and against earnings, whatever is taken for these purposes from the

earnings, and is not raised upon bonds or issue of stock. The latter method is deemed the most conservative and beneficial for the company, and operates as a restraint against injudicious dividends and the accumulation of a heavy indebtedness. The temptation is to make expenses appear as small as possible, so as to have a large apparent surplus to divide. But it is not regarded as the wisest and most prudent method. The question is one of policy, which is usually left to the discretion of the directors. There is but little danger that any board will cause a very large or undue portion of their earnings to be absorbed in permanent improvements. The practice will only extend to those which may be required from time to time by the gradual increase of the company's traffic, the dispatch of business, the public accommodation, and the general permanency and completeness of the works. When any important improvement is needed, such as an additional track, or any other matter which involves a large outlay of money, the owners of the road will hardly forego the entire suspension of dividends in order to raise the requisite funds for those purposes; but will rather take the ordinary course of issuing bonds or additional stock. But for making all ordinary improvements, as well as repairs, it is better for the stockholders, and all those who are interested in the prosperity of the enterprise, that a portion of the earnings should be employed."

In the case of *Dent v. London Tramways Company*, decided in 1879, recorded in 16 Chancery Division, 344, the law upon this subject is clearly presented. The court say:

"Then I have to consider the question: What are net profits? A tramway company lay down a new tramway. Of course the ordinary wear and tear of the rails and sleepers, and so on, causes a sum of money to be required from year to year in repairs. It may or may not be desirable to do the repairs all at once; but if at the end of the first year the line of tramway

is still in so good a state of repair that it requires nothing to be laid out on it for repairs, a sum of money ought to be set aside as representing the amount in which the wear and tear of the line has, I may say, so far depreciated it in value as that that sum will be required for the next year or next two years.

"Take the case of a warehouse. Supposing a warehouse-keeper, having a new warehouse, should find at the end of the year that he had no occasion to expend money in repairs, but thought that, by reason of the usual wear and tear of the warehouse, it was a thousand pounds worse than it was at the beginning of the year, he would set aside a thousand pounds for a repair or renewal or depreciation fund before he estimated any profits; because, although that sum is not required to be paid in that year, still it is the sum of money which is lost, so to say, out of capital, and which must be replaced. I should think no commercial man would doubt that this is the right course—that he must not calculate net profits until he has provided for all the ordinary repairs and wear and tear occasioned by his business."

The court then commented on the accounts for the half-year ending December 31, 1878, observing that the existing reserved fund was altogether inadequate for the purpose of ordinary maintenance, and that the contingency fund was not applicable to such purpose. He then continued:

"That being so, on the present evidence I am satisfied that there are no profits at present available for division."

In the case of *United States v. Kansas Pacific,* 99 U. S. 455, in reference to the expenditures to be charged against gross earnings before reaching net income, the court say:

"The former [referring to the government] insist that cer-

tain items should be excluded from the account which are claimed by the latter [meaning the railroad] to be legitimate. These items are designated in Schedule C, annexed to the findings of the court below, and are as follows:

"*First.* 'Depreciation account, or expense not charged up.' This is explained to be the amount necessary to put the road in proper repair, but which was not actually expended for that purpose. We are clearly of the opinion that it is not a proper charge. Only such expenditures as are actually made can with any propriety be claimed as a deduction from earnings.

"*Second.* 'Construction account, or improvements and additions to track,' etc. This item, according to what we have said in the Union Pacific Railroad case, ought to be allowed.

"*Third.* 'Equipment account, or replacing and rebuilding rolling-stock, machinery,' etc. This item should also be allowed as an expenditure properly chargeable to the earnings of the road, when actually paid out of the earnings and not raised by the issue of bonds or stock.

"*Fourth.* 'Real estate purchased for depot grounds, etc., and expenses of same.' This item is a proper charge if actually paid out of the earnings, and not raised by bonds or stock."

Within the language of Mr. Justice Brewer, in the opinion in the Reagan case, Thayer, J., was manifestly in error in his conclusion concerning the $169,584.65 disbursed in 1896, as shown by the stipulation of the parties. (R. 89-91.) He remarked that "a very large part of the sum last mentioned [$169,584.65]—all of it, in fact, except $6,000, was expended in building new structures and making permanent improvements." (R. 945.)

An examination of the disbursements of 1896 "for operation, maintenance and extension of improvements," shows that

the following amounts were expended that year for repairs and renewals:

For vault in the building	$386.08
For washroom in horse stable, to take the place of the old one	220.77
Labor and painting on horse stable	33.92
Office-rooms in building	831.12
Taking out old front of barn, and rebuilding it	1,541.18
Additional windows in transit-house	56.13
For moving old barn and fitting it up	600.00
One scale-house and scales in the sheep division	1,557.19
For rebuilding a worn-out train office	700.00
New drainage pipes, taking the place of former drainage system	2,416.09
For paving, to take the place of worn-out paving	44,492.07
Total	$52,834.55

In the place of only $6,000 being expended in repairs and renewals, there was actually expended in 1896, $52,834.55.

We insist, as before stated, that under the stipulation of the parties and the decisions referred to, the total sum of $169,584.65 is chargeable to actual expenses for 1896. But limiting the expenses of 1896 to repairs and renewals only, and excluding therefrom the expenses "of extension of improvements," the sum of $169,584.65 can be reduced only by the sum of $116,750.10, leaving as expended for repairs and renewals in 1896, $52,834.55.

SIXTH POINT.

IF IT WOULD BE UNREASONABLE TO REDUCE THE TOTAL NET INCOME OF THE STOCK YARDS COMPANY SEVENTY-FIVE PER CENT., PRIMA FACIE IT IS UNREASONABLE TO REDUCE ANY PART OF SUCH NET INCOME SEVENTY-FIVE PER CENT.

Ames v. U. P. Ry., 64 Fed. Rep. 165-189.

In finding No. 35 (R. 72-73) the Special Master presents his conclusion as to the effect of the provisions of the act in controversy, if these provisions had been in force during the year 1896 at the stock yards. The evident purpose of this finding is to give to the court an estimate of what would be the net income of the Stock Yards Company by the necessary operations of the act. It will hereafter very clearly appear that finding No. 35 is utterly ineffectual for that purpose, and conveys no intelligent idea of the actual result. It was the duty of the Master to have saved the court the necessity of making labored computations. His report should have indicated the net income of the Stock Yards Company in 1896, under the rates and charges fixed by the company, from each item affected by the provisions of the act. He should have then compared these results with the net income which would have been derived from the sources attempted to be regulated by the statute, if the rates fixed by the statute had been in force during the year 1896. In this way the extent of the diminution and the

amount of the return under such circumstances would have clearly appeared. Instead of doing this, the Master gives the court the gross income from yardage of cattle, calves, hogs and sheep in 1896 under the company's rates, and then compares the gross income from yardage under the rates provided by the statute. When he reaches the question of feed, he reports to the court the gross receipts from feed sold to cattle, calves, hogs, and sheep, notwithstanding he had reported in finding No. 35 the whole income of the company from the sale of feed not only to cattle, calves, hogs, and sheep, but to all other live stock, and then attempts to compare the income from feed served to cattle, calves, hogs and sheep with the total income received from feed served to all live stock; and he reports that the diminution of net income would have been $300,651.77. (R. 72-73.)

There are certain matters which embarrass this case and render the computations more than ordinarily difficult. There is in the act no interference with the income of the Stock Yards Company from the horse and mule department, or from rentals, interest, etc., nor is there any interference, so far as this question is concerned at least, with the income of the company derived from loading and unloading stock, so that we cannot place all of the expenses against all of the receipts and draw our conclusions therefrom. The attempt on the part of the Legislature is to prescribe maximum charges for driving, watering, yarding and weighing cattle, calves, hogs, and sheep, and to prescribe maximum prices for the sale of feed, and in

this suit the court is called upon to determine whether rates and charges fixed by the statute are unreasonable and afford no fair compensation to those who own the stock yards. In order to ascertain this, we must first find what it costs to drive, yard, water and weigh cattle, calves, hogs, and sheep, and what it costs to serve feed, what the receipts have been from these sources, and what reduction will be made in such receipts by the application of the act; and then we must take such proportion of the whole value of the stock yards as the present earnings from feed and yardage bear to the total earnings of the company. From these computations we may see whether the reduction made by the act in feed and yardage, if applied to all of the company's business, would leave any compensation to the owners, and if so, how much. The tables which follow give the results necessary to determine the amounts to be used in order to ascertain whether the reduction made by the act, if applied to all of the company's business, would leave any compensation to the owners of the property, and if so, the per cent.

These tables have been compiled from facts ascertainable from a careful scrutiny of findings Nos. 33, 33½, 34, 35, and 38. (R. 69-74.) The percentages and proportions have been carefully calculated, and it is believed they are correct.

The Stock Yards Company, as shown by the stipulation of the parties to these suits, received in 1896 a gross income of $1,023,870.20, and disbursed during the same time, for operation, maintenance, and improvements, as shown by the same

stipulation, the sum of $537,643.70. The rate per cent. of such disbursements to gross income is 52.51.

The gross income stated in said stipulations was derived from the following sources:

Yardage of cattle, calves, hogs, and sheep	$665,658.05
From feed sold (after deducting its cost)	187,994.69
Commissions received in horse and mule department	19,116.20
From railroads for loading and unloading cars	76,803.00
Rentals received from buildings of the company	68,706.73
From dividends, interest, and premiums on stock	5,591.53
Total gross income	$1,023,870.20

(R. 89.)

The expenditures, as stated in said stipulation of the parties, were made for the following purposes:

Paid out for labor, salaries, wages, ordinary repairs, etc.	$257,867.38
For advertising, traveling expenses, telephone service, stationery, fuel, postage, worthless accounts, etc.	66,191.65
Taxes	22,671.25
Rents paid by the company for leased ground	7,200.00
Premiums on policies of insurance	12,836.00
Paid for live stock injured or lost	1,292.77
Paid out of earnings for maintenance, improvements, etc., as per exact details in said stipulation	169,584.65
Total disbursements, as per stipulation	$537,643.70

(R. 81,89-91.)

The gross and net income of the Stock Yards Company for the year 1896, stated in detail, (the cost of operation and maintenance being calculated upon the rate per cent., heretofore stated, of disbursements as per the stipulations of the parties,

at 52.51 per cent. of the gross income,) is shown by the following tables.

The gross income, cost of operation and maintenance, and net income from the sale of feed at the yards, in 1896, are shown in—

FEED. TABLE No. 1.

	Gross Income.	*Rate % of operation and cost of maintenance, as per stipulation, 52.51%.*	*Net Income.*
Amount received for feed (less cost) served to cattle, hogs, calves and sheep	$150,432.54	$78,992.13	$71,440.41
Amount received for feed in horse and mule department (less cost),	27,385.59	14,380.17	13,005.42
Amount received for feed in Gould barn (less cost)	10,176.56	5,343.71	4,832.85
Totals	$187,994.69	$98,716.01	$89,278.68

(R. 74.)

The result upon the business of the Stock Yards Company in 1896, in its transactions in feed, if the rates provided for by the act approved March 3, 1897, had prevailed in that year, is as follows:

FEED. TABLE No. 2.

	Gross Income.	*Cost of operation and maintenance the same as in Table No. 1.*	*Net Income.*
Amount received for feed served to cattle, calves, hogs and sheep (less cost of feed)	$74,258.34	$78,992.13	—$4,733.79 Deficit.
Amount received for feed in horse and mule department (less cost of feed)	27,385.59	14,380.17	13,005.42
Amount received for feed in Gould barn (less cost of feed)	6,104.27	5,343.71	760.56
Totals	$107,748.20	$98,716.01	$9,032.19

The following table shows the gross and net income for yardage during 1896:

YARDAGE. TABLE No. 3.

	Gross Income.	*Rate per cent. of cost of operation and maintenance, as per stipulation, 52.51%.*	*Net Income.*
Cattle.....1,619,368, at 25c..	$404,840.75	$212,581.89	$192,258.86
Calves ..... 95,634, at 10c..	9,563.40	5,021.74	4,541.66
Hogs.....2,594,465, at 8c..	207,557.20	108,988.29	98,568.91
Sheep..... 873,934, at 5c..	43,696.70	22,945.13	20,751.57
Totals.....5,183.401.....	$665,658.05	$349,537.05	$316,121.00

The following table shows what would have been the net income of the Stock Yards Company from yardage, in 1896, if the rates fixed by the terms of the act approved March 3, 1897, had been in force during that time:

YARDAGE. TABLE No. 4.

	Gross Income.	*Operation and maintenance same as in Table No. 1.*	*Net Income.*
Cattle.....1,619,368, at 15c..	$242,904.45	$212,581.89	$30,322.56
Calves ..... 95,634, at 8c..	7,650.72	5,021.74	2,628.98
Hogs.....2,594,465, at 6c..	155,667.90	108.988.29	46,679.61
Sheep..... 873,934, at 4c..	34,957.36	22,945.13	12,012.23
Totals.....5,183,401.....	$441,180.43	$349,537.05	$91,643.38

The reduction in gross and net income from yardage alone by the statute is $224,477.62.

The rate per cent. of total reduction to previous total income is 33.72 of the gross income and 71.01 per cent. of the net income.

The rate per cent. of reduction of net income on cattle is 84.22.

The rate per cent. of reduction of net income on calves is

The rate per cent. of reduction on net income from hogs is 52.63.

The rate per cent. of reduction on net income from sheep is 42.11.

The following table summarizes the results shown in tables 1, 2, 3, and 4, and presents the actual results to the income of the company from feed and yardage of the application of the act approved March 3, 1897, to the business of 1896:

TABLE No. 5.

	Net income in 1896, Tables Nos. 1 and 3.	*Net income under act, Tables Nos. 1 and 4.*	*Amount of reduction, Tables Nos. 2 and 4.*	*Rate per ct. of reduction, Tables Nos. 2 and 4.*
YARDAGE.				
Cattle	$192,258.86	$30,322.56	$161,936.30	84.22
Calves	4,541.66	2,628.98	1,912.68	42.12
Hogs	98,568.91	46,679.61	51,889.30	52.63
Sheep	20,751.57	12,012.23	8,739.34	42.11
Totals	$316,121.00	$91,643.38	$224,477.62	71.01
FEED.				
Served to calves, cattle, hogs and sheep	$71,440.41	—$4,733.79 Deficit.	$76,174.20	106.6
Served in H. and H. department	13,005.42	13,005.42	No change.	None.
Served in Gould barn	4,832.85	760.56	4,072.29	84.27
Totals	$89,278.68	$9,032.19	$80,246.49	89.88
Grand totals	$405,399.68	$100,675.57	$304,724.11	75.16

The amount of gross income received by the Stock Yards Company in 1896 from sources unaffected by the statute of March 3, 1897, mentioned in the bills herein, was $170,217.46. Deducting from this sum its proportion of operating expense and cost of maintenance, 52.51 per cent., the result is the amount of net income received by the company from sources unaffected by the act, to wit, $80,826.82. If this be reduced

by the average reduction produced by the act on the items it affects, it would be $20,077.38; and the total net income would have been $120,752.95.

If the net income of the Stock Yards Company for 1896 under the statutory rates of March 3d, 1897, would have been $176,322.31, (carrying into the account the rents, earnings of horse and mule department, feed and the other items not regulated or reduced by the statute of 1897,) then, under the stipulations referred to, such income would give the following rates per cent. on the values of the property as stated, viz.:

TABLE No. 6.

	Value of Property.	*Annual Net Income.*	*Rate per cent.*
1. The property of the Stock Yards Company estimated at the market value of its stock, being $136 per share	$10,020,480.00	$176,322.31	1.75
2. Same estimate as in No. 1, with $1,200,000 deducted for outside holdings	8,820,480.00	176,322.31	1.99
3. The property of the Stock Yards Company estimated at $132 per share	9,725,760.00	176,322.31	1.81
4. Same estimate as in No. 3, with $1,200,000 deducted for outside holdings	8,525,760.00	176,322.31	2.07
5. The property of the Stock Yards Company estimated at $115 per share	8,473,200.00	176,322.31	2.08
6. Same estimate as in No. 5, with $1,200,000 deducted for outside holdings	7,273,200.00	176,322.31	2.42
7. Real and personal property used exclusively for stock-yards purposes, estimated by the Master in separate parts	5,388,003.25	176,322.31	3.27
8. Valuation in parts according to complainants' witnesses, with the improvements valued separately at $1,480,000	6,053,000.00	176,322.31	2.91
9. Value according to the average of all the testimony, on property in separate parts, and adding thereto the improvements valued at $1,480,000	6,364,000.00	176,322.31	2.77

The following table gives the annual net income and rate per cent. on the value of the property, if the reductions made by the act of March 3d, 1897, be applied to all of the company's business, estimating the value of the property according to different theories:

TABLE No. 7.

	Value of Property.	*Annual Net Income.*	*Rate per cent.*
1. Real and personal property used exclusively for stock-yards purposes. Estimate of the Master	$5,388,000	$120,752.35	2.24
2. Outstanding capital stock at par	7,368,000	Same.	1.64
3. Real and personal property of every description, and all intangible property, good-will, franchises, etc., calculating market value of stock at $115, and deducting $500,000 for outside property	7,973,200	Same.	1.51
4. Real and personal property and good-will, estimated at $780,000	6,168,000	Same.	1.94
5. Same estimated as in No. 3, except that market value of stock is calculated at $132, and $500,000 is deducted for outside holdings	9,215,000	Same.	1.31
6. Same as in No. 1, except estimating market value of stock at $125	8,710,000	Same.	1.39
7. Adding to the estimate in No. 1 the value of cash (surplus), $188,600	5,576,000	Same.	2.16
8. Value according to the complainants' witnesses, improvements valued at $1,480,000	7,253,000	Same.	1.66
9. Value according to the average of all of the testimony on values of all of the witnesses, and adding thereto the improvements valued at $1,480,000	6,364,000	Same.	1.89

If the earnings under the new act, as stated in this table and as previously found, be capitalized at six per cent., and the value of the property thus estimated, it will be found that all of the property of the company as operated under the provisions of the alleged statute would only produce six per centum, net,

per annum, on $2,012,566, which would, according to accepted business rulings, be the value of such property.

What are we to conclude from the facts disclosed by these tables? The following clearly appears: If the statutory rates had been in force at these stock yards in 1896, there would have been a deficit to the Stock Yards Company instead of an income from feed. In the native-cattle yards, which are valued by the Master at about $3,500,000, the entire net earnings would have been only about $30,000, or less than one per cent. on the investment in these yards. In the hog and sheep divisions, the return would have been only about three per cent. on the values in these departments. From the costly investment of the owners of this property in the horse and mule department, there would have been a deficit. *If the property of the defendant company had been assessed for taxation at its real value in money, even as found by the Master, practically all of these small returns would have been swept away.* And even this inequitable result is only obtained by neglecting to make any provision for contingencies which are bound to arise in every such business as this. What would be left to accumulate a fund for the rebuilding of this plant after it was worn out? If it be said that such rebuilding should be paid for out of funds derived from the sale of stock, then such stock would of necessity have to be provided for and some method of paying dividends on it devised; otherwise it could not be sold. Furthermore, every one is entitled to make prudent provision for future contingencies without having to go in debt. What would be said by the financial world to an

effort by this corporation to sell its shares to renew necessary structures when the net income of the company only showed an earning capacity of about one and one-half per cent.? As was said in the Express cases by Mr. Justice Brewer, "business men do not invest their money in moonshine." The earning capacity of a plant indicates its value. These results do not indicate regulation. They prove confiscation. At what price could these owners sell so unproductive a plant? No one would buy it. It would remain unproductive, and therefore inactive; an idle monument to public rapacity! a reproach to our boasted protection against the taking of private property for public use without just compensation. For the State offers nothing to this corporation or its stockholders in exchange for this destruction of values. It says in effect to these complainants, that the stock which they could have sold in the open market, prior to the passage of this act, for at least $125 per share, shall only be worth about $30 per share. In other words, by its act the State of Kansas asserts the right to take from these appellants $95 out of the value of every share of stock of this corporation which they own. And this without giving these appellants anything whatever! These things cannot be successfully denied. No amount of theorizing can justify such results.

"In every constitution is a guaranty against taking of private property for public purposes without just compensation. The equal protection of the laws, which, by the 14th amendment, no State can deny to the individual, forbids legislation, in whatever form it may be enacted, by which the property of one individual is without compensation wrested from him for

the benefit of another or of the public. This, as has been observed, is a government of law, and not a government of men, and it must never be forgotten that under such a government, with its constitutional limitations and guaranties, the forms of law and the machinery of government, with all their reach and power, must in their actual workings stop on the hither side of an unnecessary and uncompensated taking or destruction of any private property legally acquired and legally held." (Mr. Justice BREWER, in Reagan case.)

The expenditures in 1896 are admitted to have been wisely and economically made in the interest of the stockholders; yet if these expenditures are admitted to have been made wisely, it must also be admitted that after providing for them the act leaves only two per cent. or less, as a return which can be expected by the stockholders, and this estimated on a valuation of the property very much less than its selling price.

The Master, applying the statutory rates to the receipts and disbursements of the company for 1896, allowing the expenditures of $169,584.65, as properly chargeable to the expense account for that year, makes the total receipts of 1896, for operation of stock yards only, $711,619.45, and the total disbursements for operation of stock yards $535,297.14, leaving a net income of $176,322.31, and upon his estimate of the present value of the real estate, improvements and personal property (made by him separately) of the stock yards, $5,388,-003.25, giving an income or dividend of 3.27 per cent.

But, as already stated, the real value of the property is nearly twice that of the estimate of the Master, and the rate

per cent. would be about one-half of 3.27, only 1.63 per cent. (R. 80; D.)

The Attorney-General, upon the hearing in the court below, also conceded that if the $169,584.65 for expenditures for 1896 were properly chargeable to the expenses of that year, then the rate per cent. would be only 3.27 upon the value of the property used for stock-yards purposes as estimated by the Master. (R. 80; D.)

But in order to make a profit of 3.27 per cent. yearly, the Attorney-General, as well as the Master, must destroy the value of the property as a unit and as a completed system, and then by valuing the property in use for stock-yards purposes in separate parts, make the estimate of the value thereof only $5,388,003.25. Both the Master and the Attorney-General, in their estimate of the rate per cent. to be earned upon the value of the property of the company under the statutory rates of 1897, overlooked the established rule that *"whenever separate articles of tangible property are joined together, not simply by the unity of ownership but in a unity of use, there is not infrequently developed a property, intangible though it may be, which in value exceeds the aggregate of the value of the separate pieces of tangible property."* (*Adams Express Co. v. Ohio,* 166 U. S. 185.)

The court will notice that while the Legislature of Kansas in 1897 reduced the charges for yardage and feed in the act complained of, and thereby lessened the income of the Stock Yards Company, which has millions of dollars invested in its

plant, to the amount of $300,651.77 per year, it did not change or reduce the rates of the commission-men or brokers selling stock for shippers, who have no tangible property at the stock yards "except office fixtures." Mr. Child testified:

"Q. Where does the commission-man make his profits? A. He gets a commission from the owner per head or per car-load for selling the stock.

"Q. What do they charge down there? A. They charge on cattle fifty cents a head not to exceed ten dollars a car; on hogs, six dollars per car; sheep, six dollars per car, and for double-decked cars ten dollars per car.

"Q. Those charges are in addition to the yard company's charges? A. Yes; they have nothing whatever to do with the Stock Yards Company's charges." (R. 179-180.)

When cattle are sold in the yard, the owner or shipper pays twenty-five cents per head for yardage and five cents for hay, making thirty cents in all. The average selling price for cattle in the yards in 1896 was forty dollars per head and the average selling price of hogs eight dollars per head. (R. 148.) The Stock Yards Company, having large capital and operating its yards at great expense, receives thirty cents a head for cattle sold in the yard, and the commission merchant receives fifty cents per head. The inconsistency of the Legislature of Kansas in attempting to regulate business transacted in the yards is apparent. The discrimination is all against the Stock Yards Company.

In the Ames case, 64 Fed. 165, it was said:

"Act Neb., April 12, 1893, prescribing local freight rates on roads, which reduces such rates 29.5 per cent., is invalid where

the rates prescribed are such, as to companies operating roads within the State and doing an interstate business, that there would be no net earnings from transportation of freight if such rates were applied to all their business."

"The fact that if such statute is in force, the earnings of such roads on all their business will be sufficient to pay reasonable compensation to the owners of the roads, does not render the act valid as to them; since other States and Congress may fix like rates and thus destroy their earning capacity."

"Take the Union Pacific Railway, whose net earnings for local freight seem greater than those of any other company, and by this last table [referring to table on page 185] it appears to be bonded for $70,468 per mile. The total mileage of that road within the State is 467 miles; so that if the bonded incumbrance were distributed according to the mileage, the burden resting upon the part of the road within the State of Nebraska would be $32,908,556. Six per cent. interest on this is $1,974,513, or the amount to be paid out of the earnings of the road before the stockholders are entitled to any dividends. From Exhibit 4 it appears that the receipts for all business done in the State was $5,262,057; for hauling local freight, $398,262, or about seven and one-half per cent. of the gross receipts. Local freight, therefore, should earn seven and one-half per cent. of the amount necessary to pay the interest on the bonded indebtedness resting on the lines in the State. Seven and one-half per cent on $1,974,513 is $148,088. But the net earnings for local freight that year were $173,483, showing that there was only about $25,000 earned from local freight to be distributed among the stockholders. . . . By the same table it appears that if the rates prescribed by House Roll 33 had been in force, the earnings from local freight, upon like assumption, would have been $55,996, or but little more than one-third of the amount necessary to pay the portion of the interest on the bonds properly chargeable to local freight." (*Smyth v. Ames*, 169 U. S. 466.)

SEVENTH POINT.

CONSIDERING THE CURRENT RATE OF INTEREST IN KANSAS, AND THE CHARACTER OF THE INVESTMENT OF THE STOCKHOLDERS, THE ACT OF MARCH 3d, 1897, WOULD, BY ITS NECESSARY OPERATION, DEPRIVE THE KANSAS CITY STOCK YARDS COMPANY OF THE RIGHT TO OBTAIN JUST COMPENSATION FOR THE SERVICES RENDERED BY IT, AND WOULD ALSO DENY TO SUCH COMPANY AND ITS STOCKHOLDERS THE EQUAL PROTECTION OF THE LAWS.

The gross earnings of the Stock Yards Company in 1896 were $1,023,870.20. (R. 89.) If there is deducted the sum of $11,598.98, as received from outside property, this would leave the gross income $1,012,271.22 from the property used exclusively for stock-yards purposes.

The actual disbursements or expenditures of the company, paid out of the earnings for 1896, were $537,643.70.

If taxes of $2,346.56 on outside property be deducted, the total disbursements in 1896 for stock-yards purposes only would be $535,297.14.

If the rates prescribed by the Kansas statute of 1897 had been applied to the yarding of stock and the feed sold by the company during the year 1896, the income of the Stock Yards Company for that year would have been reduced to the extent of $300,651.77. (R. 73, 945.)

A dividend of 6 per cent. was paid upon the capital stock of the company in 1896, leaving a small surplus.

It is observed in the opinion of THAYER, J., handed down, "that the legislation complained of was radical in its nature and effect, that it reduces the company's income about 50 per cent., and that it prevents it from realizing on the capital invested in its plant such a per cent. as is ordinarily realized on capital invested in other mercantile and business enterprises." (R. 945.)

Interest in Kansas is 6 per cent. per annum, but parties may contract as high as 10 per cent. per annum.

Under the decision of *Ames v. U. P. Rly. Co.*, 64 Fed. 165, if the reductions made by the act in feed and yardage are applied to all of the company's business, the income of the company would necessarily be reduced to a greater extent than $300,651.77 yearly. The aggregate of such reductions would destroy still further the earning capacity of the property. (64 Fed. 179.)

In that case, Mr. Justice BREWER remarked that "a reduction of 29½ per cent. in the rates for local freight is unjust and unreasonable to those who have invested their money in these properties." He also referred to investors in corporation stock as being entitled to a fair rate of interest.

Is not the simple legal interest of a State a fair rate?

In *Milwaukee Electric Railway & Light Co. v. City of Milwaukee*, 87 Fed. 577, it was decided that—

"An ordinance requiring a street railroad charging 5-cent fares to sell 6 tickets for 25 cents, or 25 tickets for $1, is un-

reasonable, when the road is only making yearly net earnings of 3.3 per cent. to 4.5 per cent. on its *bona fide* investment, and paying 5 per cent. interest on its bonds, in a city where the current rate of interest on first-mortgage real-estate security is 6 per cent. Such an ordinance is void, under the fourteenth amendment, as depriving the company of its property without due process of law." (Page 586.)

Mr. Justice McKenna, in *Southern Pacific Co. v. Board, &c., supra,* referred to the fact that *"all other investments are expected to return at least legal interest, with freedom besides of unlimited advantage."* (Page 261.)

Mr. Justice Harlan, in *Smyth v. Ames, supra,* remarked:

"Can it be possible that any business so carried on can suffer a reduction of 29½ per cent. in its receipts without ruin? What would any business man, engaged in any business of a private character, think of a compulsory reduction of his receipts to the amount of 29½ per cent.?" (Page 642.)

Yet in this case, it is conceded by all the parties and the court below, that the business so carried on suffers by the statute of 1897 a reduction of 50 per cent. in its receipts. The contention of the appellants is, that upon the rates and prices regulated, the business so carried on suffers by the statute of 1897 a reduction of 75 or more per cent. in its receipts.

In this connection, we call attention to the dividends declared by State and private banks in Kansas for the year 1897. These banks are under the official supervision of the Bank Commissioner of Kansas, and reports of their receipts and disbursements are officially made and published in the public

executive documents of the State. From the report for the years 1897-98, page 218, we extract the following:

"Average capital invested during the year	$6,106,665.68
Gross earnings	1,596,282.26
Per cent. of gross earnings to capital	26.13
Number of banks paying dividends	146
Capital on which dividends were paid	3,574,900.00
Average dividend paid (per cent.)	7.91 "

From the above, we ascertain that the average dividend paid on the capital stock of 146 State banks doing business in Kansas for the year ending December 31st, 1897, *was 7.91 per cent.*

From the report for the years 1897-98, page 219, we extract the following:

"Average capital invested during year	$132,943.51
Gross earnings	585,404.77
Per cent. of gross earnings to capital	44
Number of banks paying dividends	48
Capital on which dividend was paid	627,380.00
Average dividend paid (per cent.)	18.14 "

From the above we ascertain that the average dividend paid on the capital stock of 48 private banks doing business in Kansas for the year ending December 31st, 1897, *was 18.14 per cent.*

(See Receipts and Disbursements of State and Private Banks of Kansas, hereto attached as Exhibits " F " and " G.")

In Kansas in 1896 and 1897 many municipal bonds drew interest at the rate of 7, 8, and as high as 10 per cent. per annum. Chap. 90, Session Laws of Kansas of 1877, requires

the county clerks of the several counties of the State to make out annually and file with the Auditor of State a financial exhibit of their respective counties for the preceding year. This exhibit is published officially by the executive department of the State in the public documents issued by the State. (See extracts from the Auditor's Report "concerning municipal indebtedness" of the State of Kansas for 1897-98, pages 186-223, hereto attached, and marked "Exhibit H.")

It is true that various municipal bonds of the counties, townships and cities of Kansas drew interest in 1896 and 1897 at a lesser rate than those last stated, but "Exhibit H" shows the opportunities that investors had in buying securities of Kansas in the years referred to.

The Stock Yards Company, considering the business in which it is engaged, ought not to be deprived of the right to earn a dividend of at least 6 per cent., the legal rate of interest in the State of Kansas when no written contract is made by the parties for a greater rate.

Upon the facts developed, the conclusion is irresistible that the act of March 3d, 1897, deprives the Stock Yards Company of its property without due process of law, and denies to it the equal protection of the laws.

The cases of *Munn v. Illinois, supra,* and *Budd v. New York, supra,* are not controlling upon the point under discussion. In those cases, the objection was not to any improper prices "fixed by the officers, but to their right to fix prices at all." We are

now discussing the unreasonableness of the rates fixed by the act complained of.

Chicago, M. & St. P. Rly. Co. v. Minnesota, 134 U. S. 418.
Smyth v. Ames, supra.
Reagan v. Farmers' Loan & Trust Co., supra.
Milwaukee Electric Ry. Co. v. Milwaukee, supra.
Southern Pacific Co. v. Board of Comm'rs, supra.

"The reasonableness of the schedule of rates must be determined by the facts as they exist when it is sought to put such rates into operation."

Smyth v. Ames, 171 U. S. 361, 365.

Neither do we think that certain expressions used by this court in the cases of *Covington & Lexington Bridge Turnpike Road Co. v. Sanford*, 164 U. S. 578, and *Smyth v. Ames, supra*, concerning rates "just for the public," are strictly applicable to the Stock Yards Company.

The first case had reference to "a public highway established and maintained under legislative authority." In the second case, the corporation maintained a public highway given primarily for the benefit of the public; both corporations having also the authority to exercise the right of eminent domain. The Stock Yards Company has merely the privilege of carrying on its business. No special privileges, no exclusive privileges, no right of eminent domain.

In any view of the law applicable to this case, this court should, in our opinion, rule that any rates charged by the Stock Yards Company are reasonable, which produce a return or dividend to its stockholders not exceeding the simple legal

interest established by the statute of Kansas. Within that limitation, they are reasonable and "just for the public." *"All other investments are expected to return at least legal interest, with freedom besides of unlimited advantage."*

It appears that the rates and prices charged by the company are substantially the same as those charged in other yards throughout the country, and that this company is in active competition with operators of such other yards. To say the very least, this raises the strong presumption that the rates are reasonable. That presumption is not overcome by any testimony in this case.

In considering the reasonableness of the charges and prices of the Stock Yards Company, we call attention to finding No. 39 of the Master, that—

"The other stock yards heretofore referred to are operated generally in the same manner as those at Kansas City, and there is, and was for a long time prior to March 12, 1897, active and growing competition among their owners to attract and secure to each the shipment of live stock from competitive territories. Kansas City is the greatest stocker and feeder market in the world, and while Chicago exceeds it as a general market, yet, because of the expense of transportation from Kansas City there, and the loss in weight by shrinkage during such transportation, the live stock shipped to and sold at Kansas City in 1896 realized for its owners more than $1,500,000 in excess of the amount which would have been realized if forwarded from Kansas City to, and sold on the Chicago market." (R. 74.)

The amount which the stock raisers and shippers of Kansas received in 1896 for their live stock sold in the stock yards at

Kansas City over and above what they could have received for the same stock during the same time at any other market in the West, was $1,500,000. The testimony makes it $1,600,000. (R. 123.) The entire gross income of the company for 1896 was, as has been frequently stated, $1,023,870.20. The actual benefit to the live-stock trade of Kansas by having such market facilities was over $1,500,000, almost wholly due to the existence of this plant and the enterprise and business sagacity of its management.

If the public, considered in its aggregate as an individual, is not well served when such results are produced, it is difficult to see what more advantageous conditions could be devised. If a single individual had shipped to these yards from Kansas all of the live stock received at the yards from that State, and another individual, under similar conditions, had shipped the same amount of live stock to Chicago, the net results of the two transactions would have been in favor of the shipment to these yards to the extent of over $1,500,000. Expressing this same result in a little different form, the profit at Kansas City would have paid all of the expenses and left a large surplus. (R. 74.)

EIGHTH POINT.

THE BUSINESS OF THE STOCK YARDS COMPANY IS A UNIT. AN AUXILIARY DEPARTMENT OF THE YARDS MAY YIELD A SMALL INCOME, BUT BY REASON OF IMPORTANT CONNECTIONS ITS INDIRECT CONTRIBUTIONS TO THE ENTIRE SYSTEM MAY BE VERY LARGE AND PROFITABLE.

In finding No. 34 the Master has set forth at some length the contention of the Attorney-General to the effect, that as the statute simply regulates the charges which the Stock Yards Company shall be permitted to make for yardage of cattle, calves, sheep, and hogs, and prescribes the maximum prices which it shall receive for feed sold in the yard, that branch of the business which has to do with the care and handling of horses and mules should be entirely excluded from consideration in determining the question whether the rates prescribed by the statute would afford a reasonable return to the owners of the yards for such services and feed; and then adds the receipts and expenditures in the horse and mule department. (R. 71-72.)

As was aptly said by Mr. Justice SWAYNE, in *St. John v. Ry. Co.*, 22 Wallace, 136:

"The business of the road was a unit. If it had been disintegrated, as proposed by the complainant, we apprehend it would have been found that the correlations of the main system and the branches were such, and that the expenses and charges incident to the entire business and those of the several parts were so interwoven and blended, that an accurate ascertainment

of the net proceeds of the main line and any of the auxiliaries taken separately from the rest would have been impracticable. An ancillary road may be short and yield but little income, yet, by reason of it reaching to coal-fields, or from other local causes, its contributions to other roads of the series may be very large and profitable."

And so it may be in this case. *The statute in controversy does not prescribe the maximum prices which the Stock Yards Company shall receive for feed sold in the yards.* It prescribes the maximum prices which it shall receive for all feed sold. In the next place, it may well be that while the horse and mule department yields but little net income, yet by reason of its affording advantages and conveniences to shippers of live stock, its indirect contributions to the business of the Stock Yards Company may be very large and profitable. Not only this; no more reason exists for disintegrating the unit which represents the business of the stock yards, by segregating the horse and mule department, than exists for the segregation of the sheep business from the others, or the hog business from the others, or the quarantine receipts from the others.

St. John v. Ry. Co., supra.

NINTH POINT.

THE QUARANTINE DIVISION OF THE KANSAS CITY STOCK YARDS.

The acts of Congress and the regulations of the Department of Agriculture of the United States place the live stock in the quarantine division of the yards under the protection of the commerce clause of the Constitution. The State of Kansas has no power to regulate the charges for yardage in that division.

Upon the undisputed testimony, the Master made the following finding:

"The quarantine division is operated and maintained by said defendant company in conformity to the provisions of an act of Congress, and under the personal direction, as to sanitary requirements, of the U. S. Government live stock inspector, resident at the yards. Except as hereinafter stated, this division is, between the fifteenth of February and the fifteenth of November of each year, under said act and the rules and regulations of the U. S. Department of Agriculture, devoted chiefly to the care, movement, and sale of cattle originating south of a certain geographical line designated annually by the Secretary of Agriculture. Occasionally, however, these yards are used for the yarding of native cattle sold for immediate slaughter. During the year 1896 over 300,000 cattle were handled by the Stock Yards Company in this division. It is connected with the main yards by the bridge before mentioned, which spans the Kansas river. A considerable number of the cattle originating south of the quarantine line are unloaded on the east side of the Kansas river into specially designed chutes, and by the employés of the company driven across the bridge to the quarantine division and delivered to the consignee. All cattle

purchased at the quarantine division by the beef-packing establishments heretofore mentioned located in Missouri, are driven by the purchaser from said division across the bridge, and over and along the alleys and viaducts of the defendant company to said packing establishment. The geographical line heretofore referred to lies south of the southern boundary of Kansas." (R. 69.)

The quarantine division of the stock yards is in Kansas, and cattle sent to that division on their arrival in the yards are under the protection of the commerce clause of the Constitution of the United States. They retain the character impressed upon them by this fact, although detained in the yards an indefinite period of time, on account of the effect of several acts of Congress and the rules and regulations of the Department of Agriculture made in pursuance thereof. We refer to the following acts:

"AN ACT for the establishment of a Bureau of Animal Industry, to prevent the exportation of diseased cattle, and to provide means for the suppression and extirpation of pleuro-pneumonia, and other contagious diseases among domestic animals.

"*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the Commissioner of Agriculture shall organize in his Department a Bureau of Animal Industry, and shall appoint a Chief thereof, who shall be a competent veterinary surgeon, and whose duty it shall be to investigate and report upon the condition of the domestic animals of the United States, their protection and use, and also inquire into and report the causes of contagious, infectious and communicable diseases among them, and the means for the prevention and cure of the same, and to collect such information on these subjects as shall be valuable to the agricultural and commercial interests of the country; and

the Commissioner of Agriculture is hereby authorized to employ a force sufficient for this purpose, not to exceed twenty persons at any one time. The salary of the chief of said Bureau shall be three thousand dollars per annum; and the Commissioner shall appoint a clerk for said Bureau, with a salary of one thousand five hundred dollars per annum.

"SEC. 2. That the Commissioner of Agriculture is authorized to appoint two competent agents, who shall be practical stock-raisers or experienced business men familiar with questions pertaining to commercial transactions in live stock, whose duty it shall be, under the instructions of the Commissioner of Agriculture, to examine and report upon the best methods of treating, transporting, and caring for animals, and the means to be adopted for the suppression and extirpation of contagious pleuro-pneumonia, and to provide against the spread of other dangerous, contagious, infectious and communicable diseases. The compensation of said agents shall be at the rate of ten dollars per diem, with all necessary expenses, while engaged in the actual performance of their duties under this act, when absent from their usual place of business or residence as such agent.

"SEC. 3. That it shall be the duty of the Commissioner of Agriculture to prepare such rules and regulations as he may deem necessary for the speedy and effectual suppression and extirpation of said diseases, and to certify such rules and regulations to the executive authority of each State and Territory and invite said authorities to coöperate in the execution and enforcement of this act. Whenever the plans and methods of the Commissioner of Agriculture shall be accepted by any State or Territory in which pleuro-pneumonia or other contagious, infectious or communicable disease is declared to exist, or such State or Territory shall have adopted plans and methods for the suppression and extirpation of said diseases, and such plans and methods shall be accepted by the Commissioner of Agriculture, and whenever the Governor of a State or other properly constituted authorities signify their readiness to coöperate for the

extinction of any contagious, infectious, or communicable disease in conformity with the provisions of this act, the Commissioner of Agriculture is hereby authorized to expend so much of the money appropriated by this act as may be necessary in such investigation and in such disinfection and quarantine measures as may be necessary to prevent the spread of the disease from one State or Territory to another.

"SEC. 4. That in order to promote the exportation of live stock from the United States the Commissioner of Agriculture shall make special investigation as to the existence of pleuro-pneumonia, or any contagious, infectious, or communicable disease, along the dividing lines between the United States and foreign countries and along the lines of transportation from all parts of the United States to ports from which live stock are exported, and make report of the results of such investigation to the Secretary of the Treasury, who shall from time to time establish such regulations concerning the exportation and transportation of live stock as the results of said investigations may require.

"SEC. 5. That to prevent the exportation from any port of the United States to any port in a foreign country of live stock affected with any contagious, infectious, or communicable disease, and especially pleuro-pneumonia, the Secretary of the Treasury be, and he is hereby, authorized to take such steps and adopt such measures, not inconsistent with the provisions of this act, as he may deem necessary.

"SEC. 6. That no railroad company within the United States or the owners or masters of any steam or sailing or other vessel or boat, shall receive for transportation or transport, from one State or Territory to another, or from any State into the District of Columbia, or from the District into any State, any live stock affected with any contagious, infectious, or communicable disease, and especially the disease known as pleuro-pneumonia; nor shall any person, company or corporation deliver for such

transportation to any railroad company, or master or owner of any boat or vessel, any live stock, knowing them to be affected with any contagious, infectious or communicable disease; nor shall any person, company or corporation drive on foot or transport in private conveyance from one State or Territory to another, or from any State into the District of Columbia or from the District into any State, any live stock, knowing them to be affected with any contagious, infectious or communicable disease, and especially the disease known as pleuro-pneumonia: *Provided,* That the so-called splenetic or Texas fever shall not be considered a contagious, infectious or communicable disease within the meaning of sections four, five, six and seven of this act, as to cattle being transported by rail to market for slaughter, when the same are unloaded only to be fed and watered in lots on the way thereto.

"SEC. 7. That it shall be the duty of the Commissioner of Agriculture to notify, in writing, the proper officials or agents of any railroad, steamboat, or other transportation company doing business in or through any infected locality, and by publication in such newspapers as he may select, of the existence of said contagion; and any person or persons operating any such railroad, or master or owner of any boat or vessel, or owner or custodian of or person having control over such cattle or other live stock within such infected district, who shall knowingly violate the provisions of section six of this act, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred nor more than five thousand dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment.

"SEC. 8. That whenever any contagious, infectious or communicable disease affecting domestic animals, and especially the disease known as pleuro-pneumonia, shall be brought into or shall break out in the District of Columbia, it shall be the duty of the Commissioners of said District to take measures to sup-

press the same promptly and to prevent the same from spreading; and for this purpose the said Commissioners are hereby empowered to order and require that any premises, farm, or farms where such disease exists, or has existed, to be put in quarantine; to order all or any animals coming into the District to be detained at any place or places for the purpose of inspection and examination; to prescribe regulations for and to require the destruction of animals affected with contagious, infectious or communicable disease, and for the proper disposition of their hides and carcasses; to prescribe regulations for disinfection, and such other regulations as they may deem necessary to prevent infection or contagion being communicated, and shall report to the Commissioner of Agriculture whatever they may do in pursuance of the provisions of this section.

"SEC. 9. That it shall be the duty of the several United States district attorneys to prosecute all violations of this act which shall be brought to their notice or knowledge by any person making the complaint under oath; and the same shall be heard before any district or circuit court of the United States or Territorial court holden within the district in which the violation of this act has been committed.

"SEC. 10. That the sum of one hundred and fifty thousand dollars, to be immediately available, or so much thereof as may be necessary, is hereby appropriated, out of any moneys in the treasury not otherwise appropriated, to carry into effect the provisions of this act.

"SEC. 11. That the Commissioner of Agriculture shall report annually to Congress, at the commencement of each session, a list of the names of all persons employed, an itemized statement of all expenditures under this act, and full particulars of the means adopted and carried into effect for the suppression of contagious, infectious or communicable diseases among domestic animals.

"Approved May 29, 1884." (23 R. S. 31.)

"AN ACT to provide for the inspection of live cattle, hogs, and the carcasses and products thereof which are the subjects of interstate commerce, and for other purposes.

"*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the Secretary of Agriculture shall cause to be made a careful inspection of all cattle intended for export to foreign countries from the United States, at such times and places and in such manner as he may think proper, with a view to ascertaining whether such cattle are free from disease; and for this purpose he may appoint inspectors, who shall be authorized to give an official certificate clearly stating the condition in which such animals are found, and no clearance shall be given to any vessel having on board cattle for exportation to a foreign country unless the owner or shipper of such cattle has a certificate from the inspector herein authorized to be appointed, stating that said cattle are sound and free from disease.

"SEC. 2. That the Secretary of Agriculture shall also cause to be made a careful inspection of all live cattle the meat of which is intended for exportation to any foreign country, at such times and places and in such manner as he may think proper, with a view to ascertain whether said cattle are free from disease and their meat sound and wholesome; and may appoint inspectors, who shall be authorized to give an official certificate clearly stating the condition in which such cattle and meat are found, and no clearance shall be given to any vessel having on board any fresh beef for exportation to and sale in a foreign country from any port of the United States, until the owner or shipper shall obtain from an inspector appointed under the provisions of this act such certificate.

"SEC. 3. The Secretary of Agriculture shall cause to be inspected prior to their slaughter, all cattle, sheep and hogs which are subjects of interstate commerce and which are about to be slaughtered at slaughter-houses, canning, salting, packing or rendering establishments in any State or Territory, the car-

casses or products of which are to be transported and sold for human consumption in any other State or Territory, or the District of Columbia; and in addition to the aforesaid inspection, there may be made in all cases where the Secretary of Agriculture may deem necessary or expedient, under rules and regulations to be by him prescribed, a post-mortem examination of the carcasses of all cattle, sheep and hogs about to be prepared for human consumption at any slaughter-house, canning, salting, packing or rendering establishment in any State or Territory, or in the District of Columbia, which are the subjects of interstate commerce.

"SEC. 4. That said examination shall be made in the manner provided by rules and regulations to be prescribed by the Secretary of Agriculture, and after said examination the carcasses and products of all cattle, sheep and swine found to be free of disease, and wholesome, sound, and fit for human food, shall be marked, stamped or labeled for identification as may be provided by said rules and regulations of the Secretary of Agriculture. Any person who shall forge, counterfeit, or knowingly and wrongfully alter, deface, or destroy any of the marks, stamps or other devices provided for in the regulations of the Secretary of Agriculture, of any such carcasses or their products, or who shall forge, counterfeit, or knowingly and wrongfully alter, deface or destroy any certificate provided for in said regulations, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

"SEC. 5. That it shall be unlawful for any person to transport from one State or Territory or the District of Columbia into any other State or Territory or the District of Columbia, or for any person to deliver to another for transportation from one State or Territory or the District of Columbia into another State or Territory or the District of Columbia, the carcasses of any cattle, sheep or swine, or the food products thereof,

which have been examined in accordance with the provisions of sections three and four of this act, and which on said examination have been declared by the inspector making the same to be unsound or diseased. Any persons violating the provisions of this section shall be deemed guilty of a misdemeanor, and punished for each offense as provided in section four of this act.

"SEC. 6. That the inspectors provided for in sections one and two of this act shall be authorized to give official certificates of the sound and wholesome condition of the cattle, sheep, and swine, their carcasses and products, described in sections three and four of this act, and one copy of every certificate granted under the provisions of this act shall be filed in the Department of Agriculture, another copy shall be delivered to the owner or shipper, and when the cattle, sheep and swine or their carcasses and products are sent abroad, a third copy shall be delivered to the chief officer of the vessel on which the shipment shall be made.

"SEC. 7. That none of the provisions of this act shall be so construed as to apply to any cattle, sheep or swine slaughtered by any farmer upon his farm, which may be transported from one State or Territory or the District of Columbia into another State or Territory or the District of Columbia: *Provided, however,* That if the carcasses of such cattle, sheep or swine go to any packing or canning establishment and are intended for transportation to any other State or Territory or the District of Columbia, as hereinbefore provided, they shall there be subject to the post-mortem examination provided for in sections three and four of this act.

"Approved March 3, 1891." (26 R. S. 1089.)

Section 2 of the Revised Statutes, Vol. 28, p. 732, 1895, for the inspection by the Department of Agriculture, is as follows:

"That the Secretary of Agriculture shall also cause to be made a careful inspection of all live cattle, the meat of which,

fresh, salted, canned, corned, packed, cured, or otherwise prepared, is intended for exportation to any foreign country, at such times and places, and in such manner as he may think proper, with a view to ascertain whether said cattle are free from disease, and their meat sound and wholesome, and may appoint inspectors who shall be authorized to give an official certificate clearly stating the condition in which such cattle and meat are found, and no clearance shall be given to any vessel having on board any fresh, salted, canned, corned, or packed beef being the meat of cattle killed after the passage of this act for exportation to and sale in a foreign country from any port in the United States, until the owner or shipper shall obtain from an inspector appointed under the provisions of this act a certificate that said cattle were free from disease and that their meat is sound and wholesome."

And section four is—

"That said examination shall be made in the manner provided by rules and regulations to be prescribed by the Secretary of Agriculture, and after said examination the carcasses and products of all cattle, sheep, and swine found to be free of disease and wholesome, sound, and fit for human food, shall be marked, stamped or labeled for identification as may be provided by said rules and regulations of the Secretary of Agriculture. Any person who shall forge, counterfeit, simulate, imitate, falsely represent, or use without authority, or knowingly and wrongfully alter, deface or destroy any of the marks, stamps or other devices provided for in the regulations of the Secretary of Agriculture, of any such carcasses or their products, or who shall forge, counterfeit, simulate, imitate, falsely represent, or use without authority, or knowingly and wrongfully alter, deface or destroy any certificate or stamp provided in said regulations, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding one thousand dollars or imprisonment not exceeding one

year, or by both said punishments, in the discretion of the court."

"The Secretary of Agriculture is hereby authorized to make such rules and regulations as he may decide to be necessary to prevent the transportation from one State or Territory or the District of Columbia into any other State or Territory or the District of Columbia, or to any foreign country, of the condemned carcasses or parts of carcasses of cattle, sheep and swine which have been inspected in accordance with the provisions of this act. Any person, company or corporation owning or operating any such slaughter-house, abattoir, or meat-curing, packing or canning establishment, or any employé of the same, that shall willfully violate any provision of this act, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished for each offense by a fine not exceeding one thousand dollars or imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

On January 27, 1897, the Secretary of Agriculture, in pursuance of the acts of Congress, fixed the quarantine line as follows:

"All that country lying south or below a line beginning with the northwest corner of the State of California, thence east, south and southeasterly along the boundary line of said State of California to the southeastern corner of said State, thence southerly along the western boundary of Arizona to the southwest corner of Arizona, thence along the southern boundary of Arizona and New Mexico to the southeastern corner of New Mexico, thence northerly along the eastern boundary of New Mexico to the southern line of the State of Colorado, thence along the southern boundary line of Colorado and Kansas to the southeastern corner of Kansas," etc.

In the same circular it is provided that "from the 15th day of February to the 15th day of November inclusive, during

each year, no cattle are to be transported from said area south or below said Federal quarantine line, above described, to any portion of the United States above, north, east or west of the above-described line, except by rail for immediate slaughter; and when so transported the following regulations must be observed:

"1. When any cattle in course of transportation from said area are unloaded above, north, east or west of this line to be fed or watered, the places where said cattle are to be fed or watered shall be set apart, and no other cattle shall be admitted thereto.

"2. On unloading said cattle at their points of destination, pens sufficiently isolated shall be set apart to receive them, and no other cattle shall be admitted to said pens; and the regulations relating to the movement of cattle from said area prescribed by the cattle sanitary officers of the State when unloaded shall be carefully observed."

Careful provision is further made for disinfecting the cars.

In the same circular it is further required that "stock yards companies receiving such cattle—that is, cattle affected by Texas fever—shall place the same in pens for the use of such cattle." (R. 806.)

A circular dated June 14, 1895, provides that animals "found" diseased or unfit for human food shall be marked by placing in the ear a metal tag bearing "U. S. condemned," and a serial number, "and shall by permit signed by the inspector" be removed to rendering-works designated by him, and there killed under the supervision of an employé of the Bureau of

Animal Industry, and rendered so that their products are unfit for human food.

In pursuance of these directions, or, speaking more accurately, in accordance with previous directions to the same effect from the Department, this company established quarantine yards, the location of which and access to which have already been described. (R. 361-362, 804-811.)

Albert Dean, whose testimony will be found on pages 599, *et seq.*, of the record, says he is the live-stock agent of Animal Industry, United States Department of Agriculture, and as such has charge of the movement of southern cattle, with office at the Kansas City Stock Yards, and with twelve assistants. He further says that cattle from the quarantine area do not begin to arrive at the yards until about June, and are the cattle that bring this disease; that such cattle are permitted to come north only for the purpose of immediate slaughter, explaining afterwards that they may be shipped to other points for immediate slaughter as well as at these yards. Special dumping-grounds for litter from the quarantine yards, remote from other yards, are carefully provided and maintained on the company's lands, unoccupied for other purposes. (R. 599-600.)

Native cattle—that is, cattle from regions north of the quarantine line—are not permitted in these yards or near these dumping-grounds. Mr. Dean further states that he and his officers know where the quarantined animals, which he calls infected animals, go.

After cattle in these yards are sold to packers for immediate slaughter, they are driven through fenced roadways, through which no cattle are permitted to pass except such as are for immediate slaughter. All of the requirements of the Department and its inspectors are loyally obeyed by the Stock Yards Company.

Many circulars have been issued by the Department regulating yards into which quarantine cattle are received, but it does not appear worth while to set them out here, or further refer to their provisions. (R. 804-811.) Enough has been shown to make the following circumstances clear:

1. In pursuance of the acts of Congress and the regulations of the Department of Agriculture, the company has provided yards for the accommodation of southern cattle, remote from its other yards, which cannot be availed of for the care of other stock, and special dumping-grounds have been provided, from which all native cattle are kept at a great distance.

2. While cattle are in the quarantine yards they are subject to the inspection of the Government officer; infected animals properly marked, and when condemned as unfit for human food, are, under his direction, sent to rendering establishments for slaughter, and subjected to processes which make the use of the product for food impossible.

3. Other animals sold to packers are driven from the yards, by ways used only for the purpose, to the packing-houses for immediate slaughter. So that they are isolated from all other

animals from their shipment and while passing through the yards until killed in the slaughter-houses.

It is obvious from these circumstances that during this period of time the Government retains over all this class of cattle a strict surveillance and control, regulating their transportation, yardage, sale, and slaughter. (See testimony of Albert Dean, R. 599-605, and also Regulations of the Department of Agriculture concerning quarantine line and cattle, R. 804-811.)

The question is, whether such stock during this period can be in any way interfered with by the State?

It may be said to be a well-ascertained and accepted proposition, that when property is in the hands of officers of the Government, or subject to their regulation and control in pursuance of acts of Congress, no State authority can be asserted over it, providing, of course, that the legislation of Congress is within its constitutional competency. It is to be remembered that while the stock is in quarantine all of the charges of the company, those for yardage and those for feed, accrue. No services are rendered for which charges are made after the packers take possession of the stock to drive it to their houses. Accordingly it is apparent that the act of which we complain attempts to deal with these cattle while they are within the jurisdiction of the United States. For which reason we denounce the act as beyond the legislative powers of the State.

The act of Congress and the regulations of the Department impose upon the company serious and extraordinary expenses. (R. 361-362.) *Not only are necessary services of a special*

character called for in the care of quarantined cattle, but losses are incurred, often serious in amount, by reason of the company being compelled to let valuable property lie idle without compensation. When Congress imposes such burdens upon the company, the State cannot be permitted to intervene and reduce the company's charges. If Congress is competent to throw these burdens upon the company, the Federal jurisdiction is plenary, and excludes that of the State.

The same point may be put in another way. It is obvious that Congress has regulated stock yards, to the extent at least of prescribing rules by which the use of portions of such yards shall be governed. Under these rules the use of a large amount of property owned by this company is appropriated to the exclusive care of interstate quarantine cattle. The appropriation to this particular purpose excludes the public generally from the use of the quarantine yards as a place where cattle may be exposed for sale. The State statute attempts to prescribe a rule by which the use of this same property shall be governed. Accordingly the question is: Where by an act of Congress property is appropriated to a particular purpose, can the State regulate the charge for its use for that purpose? When the Government imposes a burden upon the Stock Yards Company under its quarantine and inspection laws, and the regulations made in pursuance thereof, can the State of Kansas enact "that there shall be but one yardage charged," or fix or limit the charges for yardage in the quarantine division?

In addition to the operating and maintaining of the quar-

antine yards, the Stock Yards Company also maintains what is known as a "sheep-dip," which is used by owners of sheep at the yards in Kansas in compliance with the terms of rules established by the Department of Agriculture under the act heretofore mentioned, the operation and maintenance of which appliance is a source of expense which must be paid out of the rates and charges which the Kansas act attempts to regulate. (R. 119.)

The cost of the sheep-dipping plant was "about twelve thousand dollars." The water furnished has to be hot, ordinarily at 105°, with a curative agent mixed with it. The Stock Yards Company furnishes a furnace for the heating, and also fuel; and the compensation for the sheep-dip, etc., is included in the yardage. (R. 119.)

Where Congress legislates upon a subject within its constitutional power, such legislation cannot be supplemented by the State. Under all of the authorities, the individual States are precluded from adding anything to the regulations which Congress has seen fit to make upon this subject.

In the case of the *Missouri, K. & T. R. Co. v. Haber,* 169 U. S. 613, the doctrine is recognized that where the National Government, acting within the limits of its constitutional authority, takes under its immediate control and exclusive supervision the entire subject to which State regulation refers, a State statute of regulation would conflict therewith.

In the case of *The Covington & Cincinnati Bridge Company v. Kentucky,* 154 U. S. 204, it was decided that the statute of

Kentucky prescribing a schedule of charges over a bridge spanning the Ohio river and connecting the States of Ohio and Kentucky, was such a regulation as to interfere with interstate commerce. Therefore, in this case, the statute complained of is such a regulation as interferes with the acts of Congress and the regulations of the Bureau of Animal Industry promulgated thereunder.

TENTH POINT.

THE BUSINESS OF THE KANSAS CITY STOCK YARDS COMPANY IS DIRECTLY CONNECTED WITH INTERSTATE COMMERCE.

The business of the company, which is regulated by the act of 1897, is divisible into several distinct classes as follows:

1. Stock consigned to points beyond Kansas and Missouri comes to the yards by rail, where it lies over for rest, water and feed, and is afterwards sent forward to destination by the roads named in the bill of lading. For its services in caring for, watering and feeding such stock, the company is paid by the railroads, which reimburse themselves from the consignee.

The Master, in finding No. 30, reports the following:

"In 1896 there were received at the stock yards about 100,000 head of live stock, consigned by the shipper, to be transported by the railroads connecting with the tracks of the Stock Yards Company, to points in States other than Kansas or Missouri. All of said live stock was unloaded by the defendant company, cared for, rested, watered and fed, and, when necessary, moved by it over, along and upon its alleys, viaducts, tunnels and bridge, to the outgoing railroad named in the bill of lading accompanying said stock, to be transported to the point of final destination. All of the expenses connected with the caring for, feeding and watering of such live stock was paid to the Stock Yards Company by the railroad companies, and by them ultimately collected from the consignee." (R. 68-69.)

2. Stock originating south of Kansas on its arrival at the yards is, by acts of Congress and regulations of the Department

of Agriculture, taken in charge by officers of the United States, whereupon it is driven to the special yards and pens of the company, which are called the "quarantine division."

(*This division, and the burdens imposed upon the company by acts of Congress and the regulations of the Department of Agriculture, have already been sufficiently referred to and commented upon.*)

3. Stock is shipped from points in other States to the yards, where it is sold by the consignee or by commission-men as agents of the owner.

4. Stock originating at points in Kansas is shipped on through bills to Chicago and other eastern points, with the privilege of lying over in the yards and of being sold therein.

5. Stock is shipped from points in Kansas to the yards for sale therein.

The first class of cases mentioned in the point under discussion is that of stock shipped from points in Kansas and other States on through bills of lading to Chicago or other points in the Eastern States, and lies over in the yards of the Stock Yards Company, which that company unloads, rests, waters and feeds, and, presumably after a brief time, reloads and delivers to the road over which it is routed, which road transports it to destination. These services are rendered in pursuance of a contract between the Stock Yards Company and the railroads, which pay for these services to the company. From the time the doors of the cars are unlocked when the stock is unloaded, to the time they are locked again when the stock is

reloaded, the Stock Yards Company is responsible to the railroads for the stock, so that if in case of any shipment an animal is lost by becoming mixed with other stock, or is injured or killed, the company must pay the damage to the proper road.

The question is, whether the delay of the stock in the yards for the purpose of rest, water and feed, and the fact that these services are, under the circumstances, rendered by the Stock Yards Company and not by the railroads, merges the stock in the general mass of the property of the community, so that while it is in the yards it is not within the commerce clause of the Constitution.

1. It will be convenient to first consider the status of the property, as if the service of unloading, caring for, resting, watering and feeding the stock were rendered by the railroads. The duty to render these services is imposed upon railroads by the act of Congress entitled "An act to prevent cruelty to animals while in transit by railroad or other means of transportation within the United States," approved March 3, 1873, (17 St. 584,) and is sections 4386-4390 of the Revised Statutes, and is as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That no railroad company within the United States whose road forms any part of a line of road over which cattle, sheep, swine or other animals shall be conveyed from one State to another, or the owners or masters of steam, sailing, or other vessels carrying or transporting cattle, sheep, swine, or other animals from one State to another, shall confine the same in cars, boats, or vessels of any description, for a longer period than twenty-eight

consecutive hours, without unloading the same for rest, water and feeding, for a period of at least five consecutive hours, unless prevented from so unloading by storm or other accidental causes. In estimating such confinement, the time during which the animals have been confined without such rest on connecting roads from which they are received shall be included, it being the intent of this act to prohibit their continuous confinement beyond the period of twenty-eight hours, except upon contingencies hereinbefore stated. Animals so unloaded shall be properly fed and watered during such rest by the owner or person having the custody thereof, or in case of his default in so doing, then by the railroad company or owners, or masters of boats or vessels transporting the same at the expense of said owner or person in custody thereof; and said company, owners or masters shall in such cases have a lien upon such animals for food, care and custody furnished, and shall not be liable for any detention of such animals authorized by this act. Any company, owner or custodian of such animals who shall knowingly and willfully fail to comply with the provisions of this act shall, for each and every such failure to comply with the provisions of this act, be liable for and forfeit and pay a penalty of not less than one hundred nor more than five hundred dollars: *Provided, however,* That when animals shall be carried in cars, boats, or other vessels in which they can and do have proper food, water, space, and opportunity for rest, the foregoing provisions in regard to their being unloaded shall not apply.

"SEC. 2. That the penalty created by the first section of this act shall be recovered by civil action in the name of the United States, in the Circuit or District Court of the United States holden withhin the district where the violation of this act may have been committed, or the person or corporation resides or carries on its business; and it shall be the duty of all United States marshals, their deputies and subordinates, to

prosecute all violations of this act which shall come to their notice or knowledge.

"SEC. 3. That any person or corporation entitled to lien under the first section of this act may enforce the same by a petition filed in the District Court of the United States holden within the district where the food, care and custody shall have been furnished, or the owner or custodian of the property resides; and said court shall have power to issue all suitable process for the enforcement of such lien by sale or otherwise, and to compel the payment of all costs, penalties, charges and expenses of proceedings under this act.

"SEC. 4. That this act shall not go into effect until the first day of October, eighteen hundred and seventy-two."

The act asserts the jurisdiction of the United States during the period of the delay in the transportation of the stock. It does so not only by arresting the continuous carriage, but by declaring what shall be done during the period of detention; namely, that "the animals so unloaded shall be properly fed and watered during such rest," and exempts the railroad company from liability for the detention. If goes farther than that. It gives the railroad "a lien upon the animals for food, care and custody furnished," and confers jurisdiction upon the proper United States District Court to enforce such lien. And again, if any railroad transporting stock from one State to another does not give it rest for the prescribed time with feed and water, it is liable to severe penalties, and the duty is specially imposed upon the "United States marshals, their deputies and subordinates, to prosecute all violations which come to their notice or knowledge."

On what possible ground can the validity of this act be sustained, if, while the stock is detained, it is not within the commerce clause of the Constitution? If during that time the stock becomes merged in the mass of property of the community, Congress could not give to the carrier a right to charge for the services rendered by him, any more than it could for services rendered in respect of any other property in the State: especially could it not give a lien on the property for its charges or a right of action in the Federal courts to enforce such lien.

If anything further need be said, attention may be given to the contract of the parties. The owner of property who delivers it to the railroad at a point in one State to be transported to a point in another State, and the railroad which receives it for that purpose, enter into a contract expressed in the bill of lading for continuous carriage. The property is at once impressed with the character of commerce among the States. There is no intention on the part of either that the property shall, while on its way, lapse from that character and become merged in the mass of property in the community and be subject to the State jurisdiction. It would not be pretended that an accident, such as a collision or a flood which interrupted the continuous transportation, would have such effect. Nor would a delay at the terminus of one road caused by a glut of business in its yards, or by any other such like cause. In all these cases, for the purposes of the commerce clause of the Constitution, the transportation is to be deemed continuous although temporarily

interrupted. In short, the stock is being transported when at rest as well as when traveling.

If this were not true, there would be no end to the confusion in which the commerce of the country would be involved. At every point in the course of the transportation of property from one State to another, often upon the most slender pretext, the Federal and State authorities would come in collision, and parties concerned in such transportation would not know to which of them they should submit themselves. A way would at last have been found for imposing upon interstate commerce trammels which would be effective for suppressing it. The object of the commerce clause of the Constitution, and one of the principal reasons for the adoption of that instrument, would be defeated.

2. Thus far, the case has been considered as if the railroads provided the facilities for resting, watering and feeding the stock and rendered those services. Instead of doing so themselves, they find it more convenient to employ the Stock Yards Company to do so; and the question is, whether that circumstance changes the case.

It would be the narrowest and most unreasonable construction to say that the act of Congress requires the roads to render these services themselves and cannot employ another for the purpose.

The public is not concerned in the question who renders the services, so long as they are adequately performed. The shipper employs the railroad to transport his stock, and also rest, water

and feed it, and pays the road therefor; he has no relations or connections with the Stock Yards Company; he looks to the railroad company, which is liable to him for all the delinquencies of its agent. His rights are not impaired by the arrangement made by the road. On the other hand, it is often to the advantage of the railroad company, instead of rendering these services itself, to employ a stock yards company to do so. Feeding-yards and their operation, by employing a competent force, require large expenditures which the railroad company may very well wish to save. At the same time, a stock yards company already has yards for its other business, and maintains a trained force therefor, and can afford to do the business and charge for it less than it would cost the railroad to do it. Every consideration is in favor of leaving the railroad free to do the business itself, or employ another to do it for it. Accordingly, the Stock Yards Company's charges should no more be interfered with by the State than those of the railroads, if they rendered the services required by the statute.

In the *Covington Stock Yards Company v. Keith,* 139 U. S. 198, the Kentucky Central Railroad Company refused to receive at Covington, stock for transportation only through the yards of the Stock Yards Company, for which it paid that company and charged the amount against shippers. Mr. Justice HARLAN, in the course of his opinion, speaking for the court, said "it did not concern them [*i. e.*, the plaintiffs, who were shippers, and as such were compelled to pay the charges] whether the railroad company itself maintained stock yards, or

employed another company or corporation to supply the facilities for receiving and delivering live stock which it was under obligation to the public to furnish."

In *Cook v. Pennsylvania*, 97 U. S. 566, the question was, whether an act of the Legislature of that State was valid which required Cook, who was a licensed auctioneer, to pay into the State treasury three-quarters of one per cent. of the proceeds of the sale of imported goods, and the action was to recover those moneys from Cook. He claimed that "the sales of foreign goods are exempt from taxation, because said acts of Assembly, so far as they relate to such taxation, are in direct conflict with sections 8 and 9 of article 1 of the Constitution of the United States, and for that and other reasons, are void;" and inasmuch as the foreign goods so taxed as aforesaid were sold in bulk as they were imported by the importer, said defendant Cook acted only as his salesman.

Mr. Justice MILLER delivered the opinion of the court, and showed very clearly that in effect a license fee was a tax upon the imports, just as much when the sale is made by the auctioneer (that is, by the agent of the importer) as by the owner of the property himself. The learned judge cited a large number of cases for the purpose of showing that when the burden of the duty fell ultimately upon the importation, it was an interference with interstate commerce.

In *McCall v. California*, 136 U. S. 104, the question was whether the agent of a railroad between Chicago and New York, located in San Francisco, for the purpose of inducing passen-

gers going from San Francisco to New York to take his line at Chicago, but not engaged in selling tickets for his road or receiving or paying out money on account of it, is an agency of interstate commerce, and whether a license tax imposed upon him for the privilege of doing business in San Francisco is a tax upon interstate commerce. Mr. Justice LAMAR delivered the opinion of the court, in the course of which he said:

"If the business of the railroad company in carrying passengers by rail between Chicago and New York and intermediate points in both directions is interstate commerce, as much so as is the carrying of freight, it follows that the soliciting of passengers to travel over that route was a part of the business of securing the passenger traffic of the company. The object and effect of his soliciting agency were to swell the volume and business of the road. It was one of the means by which the company sought to increase and doubtless did increase its interstate passenger traffic."

In both these cases the party against whom the charge was made was the agent, in one case of the importer, and in the other of the railroad, and was just as much protected by the commerce clause of the Constitution as his principal.

In the case of *The Daniel Ball*, 10 Wallace, 557, it is said:

"Inasmuch as her agency in the transportation was entirely within the limits of the State, and she did not run in connection with or in contention of any line of vessels or railway leading to other States, it is contended that she was engaged entirely in domestic commerce. But this conclusion does not follow. So far as she was employed in transporting goods destined for other States or goods therefrom without the limits of Michigan and destined to places within that State, she was engaged in

commerce between States, and however limited that commerce may have been, she was, so far as it went, subject to the legislation of Congress. She was employed as an instrument of that commerce, *for whenever an article has begun to move as an article of trade from one State to another, commerce in that commodity between the States has commenced.* The fact that several different and independent agencies are employed in transporting the commodity, some acting entirely in one State and some acting in two or more States, does in no respect affect the character of the transaction. To the extent in which each agency acts in that transportation it is subject to the regulation of Congress. . . . If its authority does not extend to an agency in such commerce when that agency is confined within the limits of a State, its entire authority over any such commerce may be defeated."

This decision has not only been frequently approved by this court, but, as we have seen, it has ripened into positive law by the passage of the act of February 4, 1887, entitled "An act to regulate commerce." It is hardly necessary to argue that if the authority of Congress extends to the regulation of an agency of interstate commerce, when that agency is confined in its action entirely within the limits of one State, that there can be any rational doubt that an agency such as the structure of the defendant company, comprising railroad tracks, alleys, viaducts, tunnels, and bridge, lying in two States, is within such authority.

In the case of *Walker v. Keenan,* 73 Fed. Rep. 755, Judge SHOWALTER, speaking for the United States Circuit Court of Appeals, Seventh Circuit, said (page 711):

"As incidental to its business of transporting or hauling cattle, a railroad company must provide the means of loading, un-

loading and caring for such freight pending its delivery to the consignee. The hauling the cattle from one point to another and the providing the car, track, engine and servants for that purpose, are no more a part of the service rendered by the carrier than are the loading and unloading, and the providing the appliances and servants for those purposes."

And on page 672 he says:

"In the case at bar appellants [Santa Fe R. R. Co.] with their own engines and switching-crew, removed the cars, laden with cattle, from a point in the Chicago end of their line over the track of the Union Stock Yards & Transit Company to the Union Stock Yards."

The finding of the Master, No. 21, shows that the eleven railroad companies whose tracks connect with the tracks owned and maintained by the defendant company, with their own engines and switching-crews, remove cars laden with live stock, from a point on their own tracks, both in Kansas City, Kansas, and Kansas City, Missouri, to the stock yards, and such stock, having been unloaded, rested, watered and fed by the Stock Yards Company, are reloaded into the cars of these railroad companies, and removed with such railroad companies' engines and switching-crews over the tracks of the Stock Yards Company to a point on their own tracks in Kansas or Missouri, and thence proceed on their journey to other States.

The sources of income set out in detail hereinbefore, and in the Master's report, conclusively show that large sums of money are annually derived from the sale of feed. Under its present rates, the defendant company would receive, as its entire com-

pensation for receiving, handling, storage, delivering, feeding and watering cattle in transit from one State to another, two dollars per car. (R. 114-145, 248.) As shown elsewhere, the prices fixed by the act for feed would reduce the gross income from that source nearly one-half, so that instead of getting two dollars per car for this service performed in connection with the transportation of live stock from one State to another, the defendant company would only receive one dollar and fifty cents for such service, a reduction of twenty-five per cent. It is therefore very certain that the Kansas act attempts to *directly* regulate the transportation of live stock from one State to another. It is familiar law that this cannot be done by the individual States.

Can there be any rational doubt that the Stock Yards Company's tracks, unloading-chutes, alleys, viaducts, bridge, tunnels and yards are essential parts of the means used for transporting such live stock from one State to another?

We submit, therefore, that the act of March 3d, 1897, is repugnant to and inconsistent with the Constitution and laws of the United States.

Gibbons v. Ogden, 9 Wheat., *supra.*
Welton v. Missouri, supra.
Gloucester Ferry Co. v. Pennsylvania, supra.
State Freight Tax, supra.
State Tax on Railway Gross Receipts, id. 284.
The Granger Cases, 94 U. S. 155.
Wabash Railway Co. v. Illinois, supra.

ELEVENTH POINT.

SHIPMENTS TO THE STOCK YARDS ORIGINATING IN OTHER STATES THAN KANSAS.

A large portion of shipments to the yards originates in other States than Kansas.

On arrival at the yards, the roads hauling the stock there run their engines, cars and trains from their own tracks onto those of the company and over them to its chutes, where it unloads the cars and drives the stock to pens, waters and feeds it, as the owners require. The service of what is called "yarding," includes, as has been repeatedly stated, all the services which the company renders except unloading and feeding. Only one charge is made, no matter whether the live stock remains in the pens one hour, one day, or longer.

When a sale of stock is negotiated, the stock is weighed on the company's scales by its employé. He makes a certificate showing the stock, its character, number of head, and weight. Upon this certificate the parties calculate the amount payable by the purchaser, and are thus enabled to and do consummate the sale. If the sale falls through and another is made, or if the purchaser resells in the yards, no charge is made for weighing the stock a second or any other number of times. It follows that as only one charge is made for yardage, whatever is earned by the company precedes the sale.

Now the question arises, when does this stock pass from its condition as interstate business into the mass of the property of the community, so as to become subject to the jurisdiction of the State? Does that change take place on the arrival of the stock in the yards, or when a sale is completed? That question has been determined a great many times by the Supreme Court. It received the most careful consideration in *Brown v. Maryland,* 12 Wheat. 419, where Chief Justice MARSHALL delivered one of his most luminous opinions. It was an indictment under an act of the Legislature of the State of Maryland, which provided that "all importers of foreign articles or commodities, dry goods, wares or merchandise by bale or package, or of wine, rum, brandy, whisky, and other distilled spirituous liquors, etc., . . . shall, before they are authorized to sell, take out a license," for which they are to pay $50; and in case of neglect or refusal to take out such license shall be subject to certain penalties and forfeitures. The question was whether the license was a tax upon importations which could be exacted by the State, and whether the State jurisdiction attached to the property before it was sold by the importer.

The Chief Justice said:

"If this power [that is, the commercial power of Congress] reaches the interior of a State, and may be there exercised, it must be capable of authorizing the sale of those articles which it introduces. Commerce is intercourse—one of its most ordinary ingredients is traffic. It is inconceivable that the power to authorize this traffic when given in the most comprehensive terms, with the intent that its efficiency should be complete,

should cease at the point when its continuance is indispensable to its value. To what purpose should the power to allow importation be given, unaccompanied with the power to authorize a sale of the thing imported? Sale is the object of importation, and it is an essential ingredient of that intercourse of which importation constitutes a part. It is as essential an ingredient, as indispensable to the existence of the entire thing, as importation itself. It must be considered as a component part of the power to regulate commerce. Congress has a right, not only to authorize importation, but to authorize the importers to sell. . . .

"The power claimed by the State is in its nature in conflict with that given to Congress; and the greater or less extent in which it may be exercised does not enter into the inquiry concerning its existence. We think, then, that if the power to authorize a sale exists in Congress, the conclusion that the right to sell is connected with the law permitting importation as an inseparable incident, is inevitable."

Bowman v. The Chicago & Northwestern Railway Co., 125 U. S. 465, was an action to recover damages arising from the refusal of a railway to accept at Chicago a shipment of liquors to a point in Iowa. The Railway Company defended by alleging an act of the Legislature of that State forbidding carriers to bring into it liquors from other States. Mr. Justice MATTHEWS delivered the opinion of the court, in the course of which he said:

"It is easier to think that the right of importation from abroad, and transportation from one State to another, includes by necessary implication the right of the importer to sell in unbroken packages at the place where the transit terminates, for the very purpose and motive of that branch of commerce, which consists in transportation, is that other and consequent act of

commerce which consists in the sale and exchange of the commodities transported."

Mr. Justice FIELD delivered a concurring opinion, in the course of which he said:

"That the right of importation carries with it the right to sell the article imported, does not appear to me doubtful. . . . To assert that, under the Constitution of the United States, the importation of an article of commerce cannot be prohibited by the States, and yet to hold that when imported its use and sale can be prohibited, is to declare that the right which the Constitution gives is a barren one, to be used only so far as the burden of transportation is concerned, and to be denied so far as any benefits from such transportation are sought. The framers of the Constitution never intended that a right given should not be fully enjoyed."

Leisy v. Hardin, 135 U. S. 100, was replevin of several quarter and eighth barrels of beer, which the defendant had seized in a proceeding on behalf of the State of Iowa against the defendants, under a statute which forbade any person manufacturing, selling, keeping for sale, etc., any intoxicating liquor for any purpose whatever other than as provided in the act. The beer in question was made at Peoria, in Illinois, and transported by the plaintiff from that city to Keokuk, in Iowa, in sealed kegs and cases in which the property was put up in the former city. It was offered for sale by the plaintiff, when it was seized as above stated. Mr. Chief Justice FULLER delivered the opinion of the court, and on page 124 said:

"Under our decision in *Bowman v. The Chicago etc. Railway Co., supra,* they [that is, the plaintiffs] had the right to import

this beer into that State; and, in the view which we have expressed, they had the right to sell it, by which act alone it would become mingled in the common mass of property within the State. Up to that time, we hold that in the absence of Congressional permission to do so, the State had no power to interfere by seizure or any other action, in prohibition of importation and sale by the foreign or non-resident importer."

Scott v. Donald, 165 U. S. 58, was an action for damages caused by the seizure of several packages of wine and liquor belonging to the plaintiff, which at the time of seizure were in the possession of railroad companies as common carriers, which companies had brought the same into the State of South Carolina, some from Georgia, others from Maryland, and others from New York. Mr. Justice SHIRAS delivered the opinion of the court. The learned judge reviewed a large number of judgments of the Supreme Court, particularly the two last cited, holding, upon the authority of them, that the statute which forbade the sale of liquors without a license or permit, was unconstitutional.

See also *Welton v. Missouri, supra; Walling v. Michigan,* 116 U. S. 446; *The Daniel Ball,* 10 Wall. 557; *Mobile v. Kimball,* 102 U. S. 691.

In the cases at the Circuit in which the same principle has been administered may be mentioned: *In re Saunders,* 52 Fed. 802; *In re Minor,* 69 Fed. 333; *Ex parte Loeb,* 72 Fed. 67; *Donald v. Scott,* 74 Fed. 859; *Southern Ry. Co. v. City of Asheville,* 69 Fed. 359; *Webster v. Bell,* 68 Fed. 183.

A shipment from a Western State to the yards, under the

principle declared in these and many other cases is impressed with the character of interstate commerce from the point at which it is shipped until it is sold in the yards. At no point and at no moment does it come within the jurisdiction of the State, so as to be subject thereto in respect to the charges made for its transportation, until sold and the transaction of sale has been completed. As all the charges of the company are for the services rendered and material sold prior to that time, the act here complained of which attempts to regulate its charges, infringes the commerce clause of the Constitution, and is therefore void.

TWELFTH POINT.

LIVE STOCK ORIGINATING IN ONE STATE CONSIGNED ON A THROUGH BILL OF LADING TO ANOTHER STATE, AND STOPPED IN TRANSIT FOR EXPOSURE TO SALE AT A CONVENIENT MARKET, ARE SUBJECTS OF INTERSTATE COMMERCE, NO REGULATION OF WHICH CAN BE PRESCRIBED BY THE STATE WHEREIN SUCH STOCK ARE EXPOSED FOR SALE PRIOR TO SUCH SALE.

In 1896, about 2,000,000 head of live stock arrived at the yards, originally consigned by the shippers thereof to States other than Kansas or Missouri. The Master made the following finding upon this subject:

"In addition to the live stock mentioned in finding No. 30, about 40 per cent. of all the stock received at the Kansas City Stock Yards in 1896 was originally consigned to other States than Kansas, but with the right to expose said property for sale at Kansas City. With the exception of about 100,000 head, described in finding No. 30, the live stock so billed through was sold at the Kansas City Stock Yards. All of the services in and about the handling of all live stock by the defendant company at the yards was and is performed prior to its sale, except driving to cars to be loaded, and all the fees and charges made by the company mentioned in the exception last herein set out, were and are earned prior to its sale." (Finding No. 32, R. 69.)

It is very certain that such business is impressed with the character of interstate commerce when delivered to the carrier at point of origin, when he issues a through bill, and it retains that character when delivered by the road to the company. Until it is sold, which as we have seen is after the services have

been rendered, the character of the shipment or of the service does not undergo any change. This may be illustrated: Suppose the act related only to shipments originating at a point within the State and consigned to these yards, which we admit would be within the competency of the Legislature; but there were interstate shipments for which the company imposed other charges, either higher or lower. If a shipment were received on a through bill the charges would be accordingly. If any were sold in the yards, the charges for yardage and weighing would be on the same basis, because they are for services rendered before the sale, and they would not be changed by anything transpiring afterwards; otherwise the company could not know whether it was to receive the statutory rates until the sale was completed. Dealing under a contract, it could not know what the contract was until it had performed its part of it. The uncertainty and confusion of such a course of dealing illustrates the absurdity of the proposition that such business can, for the purpose of this company, be characterized as local business, until after the services had all been rendered by it.

THIRTEENTH POINT.

PROPERTY PURCHASED IN ONE STATE FOR SHIPMENT TO ANOTHER.

In 1896 about 1,000,000 head of stock were purchased at these yards for shipment to other States. Upon the receipt by the Stock Yards Company from the purchaser of an order to deliver the stock purchased to a railroad company for shipment, under its contract with the railroad companies, the Stock Yards Company takes such stock from the pens where it is awaiting disposition, drives it to the nearest approach to its viaduct system, which begins on a point in the State of Kansas near the southwest corner of the north yards, and thence continues, with various angles and branches, in a general southerly direction about 3,500 feet (one branch connecting with the Kansas river bridge) to a point where it turns east about 500 feet, crossing the Kansas-Missouri State line; thence south about 400 feet to a group of pens located within the State of Missouri, known as the shipping division. There the live stock is assembled for shipment, and as rapidly as a train is made up under the supervision of the yardmaster or the Stock Yards Company the cars laden with stock are removed by the railroad company's engines and switching-crews to some point in the State of Missouri where the tracks of the Stock Yards Company intersect with the tracks of the railroad company, and thence such cattle pro-

ceed on their journey to other States. (Findings Nos. 29, 28, 22, R. 66, 67, 68.)

As shown by the testimony, the recognized practice at the stock yards for many years has been that the Stock Yards Company becomes liable to the railroad company as its agent for the care of this stock from the time it receives the shipping order until the stock has been placed in the car standing on the track of the Stock Yards Company adjacent to the shipping division. (R. 248-249.)

The question now arises whether the railroad tracks, loading-chutes, alleys, bridge, viaducts and tunnels operated and maintained by the defendant company are not "instrumentalities of the shipment of property from one State to another." In the interstate commerce act, it will be remembered, Congress uses the following language: "The term 'railroad' as used in this act shall include all bridges and ferries used or operated in connection with any railroad. . . . Also all the roads in use by any corporation operating a railroad, whether owned or operated under contract, agreement or lease; and the term 'transportation' shall include all instrumentalities of shipment or carriage."

Unless it appears that these appliances are not instrumentalities of shipment, it is quite clear that they are embraced within the regulation enacted by Congress, and are also within the language used in the next paragraph of the same section of the same act, viz.:

"All charges made for any service rendered . . . in

connection therewith, or for the receiving, delivering, storage or handling of such property, shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful."

It cannot be denied that in this act Congress was legislating upon the subject of charges made for services rendered in connection with the transportation of property from one State to another; nor can it be denied that, so far as the defendant Stock Yards Company is concerned, the State of Kansas has legislated upon precisely the same subject. If the act of March 3, 1897, contained a proviso that the act should not be so construed as to apply to "charges made for any service rendered or to be rendered in the transportation of property from one State to another, or in connection therewith, or for receiving, delivering, storage or handling of live stock in the course of transportation from one State to another," there would be very little of the business at the stock yards to which this act could possibly apply.

Walker v. Keenan, 73 Fed. Rep. 755.
The Daniel Ball, 10 Wall., *supra.*
Norfolk & West R. R. Co. v. Penna., 136 U. S. 114.
Gulf C. & G. Ry. Co. v. Helfley, 158 U. S. 98.

FOURTEENTH POINT.

"THE AUTHORITY OF THE STATE, SO FREQUENTLY RECOGNIZED BY THIS COURT, TO FIX TOLLS FOR THE USE OF WHARVES, PIERS, ELEVATORS, AND IMPROVED CHANNELS OF NAVIGATION, HAS ALWAYS BEEN LIMITED TO SUCH AS WERE EXCLUSIVELY WITHIN THE TERRITORY OF A SINGLE STATE, THUS AFFECTING INTERSTATE COMMERCE BUT INCIDENTALLY, AND CANNOT BE EXTENDED TO STRUCTURES CONNECTING TWO STATES WITHOUT INVOLVING A LIABILITY OF CONTROVERSIES OF A SERIOUS NATURE."

(154 U. S. 204-223.)

The Master made the following findings:

XXVIII.

"The tracks of eleven separate railway companies connect at the yards with those of the Stock Yards Company. Said yards have about fifteen miles of alleys, two tunnels for stock, one and a half miles of stock viaducts, a large bridge spanning the Kansas river, some of which are used daily by the owners and shippers of live stock, commission-men, buyers, and forwarding merchants, their agents, servants and other persons engaged in traffic in live stock, in going from one of these States to the other, and in transporting, moving and driving the same from Missouri to Kansas, and from Kansas to Missouri, to be weighed for sale, shipment to some other State, and for slaughter. The several packing establishments mentioned in finding No. 5 are located in the vicinity of and communicate with the stock yards by means of driveways, alleys and viaducts. In 1896 one large packing-house in Missouri purchased at the yards for slaughter, 35,511 cattle, 309,613 hogs, and 15,295 sheep; and agents of corporations and persons, citizens of other States than Kansas and Missouri, purchased for shipment to

such persons and corporations beyond the boundaries of Kansas and Missouri, 386,432 cattle, 333,818 hogs, and 204,388 sheep. (R. 67-68.)

XXIX.

"There is located within the State of Missouri, situated just south of the Exchange building, a group of cattle-pens known as the 'shipping division,' which adjoins and communicates with the railroad tracks owned by the Stock Yards Company, and used particularly in the preparation for shipment of cattle purchased in the main yards of the company. This group of pens is connected by means of alleys with the viaduct system of the stock yards, and is designed for and daily used in the movement of cattle purchased in Kansas and Missouri for shipment largely to other States. After cattle are sold in the main yards, whether in Kansas or Missouri, for shipment, they are usually driven to the nearest approach to the viaduct system, then over the viaducts (which are overhead driveways), which begin at a point in the State of Kansas near the southwest corner of the north yards, and from thence continue with various angles and branches in a general southerly direction about 2,500 feet (one branch connected with the Kansas river bridge) to a point where it turns east about 500 feet, crossing the State line, thence south about 400 feet to the shipping division. From this shipping division the cattle are loaded upon the cars belonging to the different railroad companies, standing upon the Stock Yards Company's tracks, to be transported to other points. In 1896, and during each of several years prior thereto, several hundred thousand head of cattle were thus disposed of." (R. 68.)

XXX.

"In 1896 there were received at the stock yards about 100,000 head of live stock, consigned by the shipper, to be transported by the railroads connected with the tracks of the Stock Yards Company, to points in States other than Kansas or Missouri. All of said live stock was unloaded by the defendant company, cared for, rested, watered and fed, and when

necessary moved by it over, along and upon its alleys, viaducts, tunnels and bridge, to the outgoing railroad named in the bill of lading accompanying said stock, to be transported to the point of final destination. All of the expenses connected with the caring for, feeding and watering, of such live stock was paid to the Stock Yards Company by the railroad companies, and by them ultimately collected from the consignee." (R. 68-69.)

The defendant company, out of the charges attempted to be regulated by this act, maintains a system of stock yards in two States, across and through which the entire commerce in live stock from thirty-four States ebbs and flows. The plant or system of yards operated by the defendant company is situated on both sides of the Missouri and Kansas State line. (Finding No. 28, R. 68-69.)

Native cattle enter the yards over the company's tracks and are unloaded at the chutes in Kansas, from which they are driven by the company's employés to the pens. *The important fact to be noted in this connection is, that they are driven, some to pens in Kansas and the rest to pens in Missouri, as directed by the owner or his agent, and not with regard to the convenience of the company; and are exposed for sale and sold as they are thus yarded under his direction.* Speaking generally, about one-third in number are thus yarded in Kansas and two-thirds in Missouri. Testimony was taken of the disposition of the cattle in this respect received in one day, which showed by actual count that on that day 5,186 head originating in Kansas were received, and 2,413 were yarded in Missouri and 1,772

were yarded in Kansas. *It results that on that day 3,413 head originating in Kansas were by express direction of their owners driven, from the place of unloading from the cars in Kansas over the company's alleys and viaducts, to their pens in Missouri, and there sold. In this movement of the cattle the owner used the appliances of the company for the purpose of driving his stock from Kansas to Missouri, and no other facilities could be availed of by him at that place for that purpose.*

Having regard to the fact, first, that the appliances of the stock yards under the circumstances are indispensably necessary, and are employed in the transportation of the stock from Kansas to Missouri, so that the company directly participates in that transaction, and, secondly, to the further fact that Kansas cattle are thus transported by express direction of their owners to Missouri, where they are sold, making use of the company's roads, etc., for the purpose, the circumstance that the company has other yards in Kansas is immaterial and irrelevant. *The business is interstate, and under the protection of the Constitution, by reason of the cattle being driven by their owners from one State to another; and as the company contributes to such transportation it also is engaged in interstate commerce. Nor is it of consequence that the distance from the State line to the pens in Missouri is inconsiderable.* As Mr. Justice Brown says in the Covington Bridge case: "If interstate commerce means simply commerce between the States, it must apply to all commerce which crosses the State line, regardless of the distance from which it comes or to which it is

bound before or after it crosses such State line." The case therefore is that of a structure, consisting of the company's ways, alleys and viaducts, extending from one State to another, used for transportation of stock originating in one and seeking a market in the other. This is the Covington Bridge case in all its circumstances. (154 U. S. 204.)

In 1890 the Legislature of Kentucky passed an act by which it attempted to regulate the rates which the Covington & Cincinnati Bridge Company should charge persons using their bridge, extending from the city of Covington in Kentucky to the city of Cincinnati in Ohio. The act prescribed rates for persons, and also rates for property which might go or be taken across the bridge from one State to another. The bridge company failing to comply with the provisions of the act, an indictment was filed, the bridge company demurred thereto, and the law having been upheld by Kentucky, the controversy was taken by writ or error to this court. On the part of the bridge company it was contended that the bridge being an instrumentality of interstate commerce, lying partly in two States, it was beyond the power of the State of Kentucky to regulate its charges. On the part of the State it was contended that the business or employment of the bridge was not commerce, and that the act of the State of Kentucky was not a regulation of commerce; that the act was a mere regulation of charges for the use of artificial facilities, consisting of mere local aids to commerce, and affecting commerce only incidentally; that such facilities did not require nor admit of uniformity of regulation;

and that Congress not having legislated on the subject, it was competent for the State to do so. Counsel for the State relied upon *Munn v. Illinois, Budd v. New York, Brass v. North Dakota,* together with other similar decisions.

The decision of the Supreme Court was delivered by Mr. Justice Brown. Before discussing the facts in the particular case before it, the court said:

"The adjudications of this court with respect to the power of the States over the general subject of commerce, are divisible into three classes: first, those in which the power of the State is exclusive; second, those in which the States may act in the absence of legislation by Congress; third, those in which the action of Congress is exclusive, and the States cannot interfere at all." (154 U. S. 204.)

Thereupon the court reviewed all of the leading cases upon this subject; among others, *Munn v. Illinois, Budd v. New York, Brass v. North Dakota;* and on page 216 of the opinion exhaustively reviewed the case of *Wabash Railway Company v. Illinois,* 118 U. S. 557. On page 217 the court says:

"The real question involved here is whether this case can be distinguished from the Wabash case. That involved the right of a single State to fix the charge for transportation from the interior of such State to places in other States. This case involves the right of one State to fix charges for the transportation of persons and property over a bridge connecting it with another State, without the assent of Congress or such other State, and thus involving the further inquiries: First, whether such traffic across the river is interstate commerce; and, second, whether a bridge can be considered an instrument of such commerce."

The court further say (page 218):

"An attempt is made to distinguish a bridge from a ferry-

boat, and to argue that while the latter is an instrument of interstate commerce, the former is not. Both are, however, vehicles of such commerce, and the fact that one is movable and the other is a fixture makes no difference in the application of the rule. . . . While the bridge company is not itself a common carrier, it affords a highway for such carriage, and a toll upon a bridge is as much a tax upon commerce as a toll upon a turnpike is a tax upon the traffic of such turnpike, or the charges upon a ferry a tax upon commerce across a river."

The learned judge concludes his opinion by a quotation from that of Mr. Justice MILLER in the Wabash case, as follows:

"It is impossible to see any distinction in its effects upon commerce of either class, between a statute which regulates charges for transportation and a statute which levies a tax for the benefit of the State upon the same transportation."

The court reached the result that the act of Kentucky amounted to a regulation of interstate commerce, and was therefore void.

It seems to us that the court in this case must also reach the result that the act of Kansas complained of amounts to a regulation of interstate commerce.

As we have seen from the case of *La Loup v. Mobile, supra,* an act of an individual State which amounts to a regulation of interstate commerce cannot be upheld upon the ground that some of the commerce carried on by the person or corporation whose business is regulated is domestic or internal. Therefore, if any part of the business transacted at the stock yards is interstate commerce within the meaning of the Federal Constitution, the statute of 1897 must be declared void.

FIFTEENTH POINT.

THE PROPERTY OF THE KANSAS CITY STOCK YARDS COMPANY, PARTICULARLY THE STRUCTURE CONNECTING THE STATES OF KANSAS AND MISSOURI, USED BY SHIPPERS FOR DRIVING AND TRANSPORTING THEIR LIVE STOCK, (THE TOLL OR COMPENSATION FOR WHICH IS INCLUDED IN THE CHARGE FOR YARDAGE,) IS AN INSTRUMENT OF INTERSTATE COMMERCE.

THAYER, J., in his opinion handed down at the time the final decree was rendered, attempts to meet the conclusion inevitable from our explanation of the different classes of the company's business, by saying that the effect of the act of March 3, 1897, "on interstate traffic is purely incidental, and to the extent that it prevents excessive charges for yarding and feeding cattle in course of transit, it tends to facilitate rather than to hinder such traffic."

If that argument is good in this case, then it is equally good in the case of the *Covington Bridge Company v. Kentucky, supra*, where the Kentucky law of 1890, fixing rates over the bridge of the Covington & Cincinnati Bridge Company, spanning the Ohio river, and connecting the States of Ohio and Kentucky, "reduced the rates of toll so that the net profits of the bridge should not exceed 15 per cent. per annum, after the proper deductions were made for repairs and charges of other descriptions." It might as well have been said in the opinion handed down in that case, as in this case, that the Kentucky law

of 1890 "prevents excessive charges, . . . and tends to facilitate rather than to hinder interstate traffic."

If the cheapening of rates on interstate traffic must be considered in such a case as this, as tending to facilitate, rather than to hinder such traffic, then the cheaper the rates the better, and the constitutional provisions for the protection of property must be wholly ignored.

Again, if it is fair argument to insist that the extensive viaducts and structures of the Stock Yards Company, extending from a point in Kansas to a point in Missouri, are merely aids or incidents to commerce, why should it not be insisted that the bridge spanning the Ohio river, and connecting the States of Ohio and Kentucky is a mere aid or incident to commerce? In the one case, the structure connects the State of Kansas with the State of Missouri. In the other case, the structure connects the State of Ohio with the State of Kentucky. If the Kentucky law, fixing the rates over the structure connecting the States of Ohio and Kentucky, was an attempted regulation of commerce which it was not within the power of Kentucky to make, then we earnestly insist that the Kansas law of 1897 fixing a rate for yardage (which includes driving stock by the shipper over the structure connecting Kansas and Missouri) is also an attempted regulation of commerce which it is not within the power of Kansas to make. Therefore, we repeat what was said in the Covington Bridge Company case:

"The authority of the State, so frequently recognized by this court, to fix tolls for the use of wharves, piers, elevators and im-

proved channels of navigation, has always been limited to such as were exclusively within the territory of a single State, thus affecting interstate commerce but incidentally, and cannot be extended to structures connecting two States, without involving a liability to controversies of a serious nature." (154 U. S. 204-224.)

In the opinion of THAYER, J., it is said:

"This shifting of live stock from one side of the State line to the other, and for its own convenience, is not interstate commerce, within the proper meaning of that phrase."

This statement evades the point in dispute. We are not contending that if the Stock Yards Company, for its own convenience, shifted live stock from one side of the State line to the other within its own yards, that thereby interstate commerce is involved. The testimony is that the structures referred to are used and traveled upon by the owners and shippers of cattle in driving their live stock from one State to the other, in the same way as the bridge of the Covington & Cincinnati Company, spanning the Ohio river and connecting the States of Ohio and Kentucky, is used for persons, live stock, &c. The Master reports:

"Said yards have about fifteen miles of alleys, two tunnels for stock, one and a half miles of stock viaducts, a large bridge spanning the Kansas river, some of which are used daily by the owners and shippers of live stock, commission-men, buyers, and forwarding merchants, their agents, servants and other persons engaged in traffic in live stock in going from one of these States to the other, and in transporting, moving and driving the same from Missouri to Kansas, and from Kansas to

Missouri, to be weighed for sale, shipment to some other State, and for slaughter." (Finding No. 38 of Master, R. 67-68.)

The case of *Missouri, K. & T. R. Co. v. Haber*, 169 U. S. 613, does not conflict with our contention. In that case, it was decided that "the power of the States to protect their domestic cattle from contagious diseases was left untouched and unimpaired by the act of Congress of March 29th, 1884." And it was further decided that "the Kansas statute of 1885, as amended in 1891, for the protection of domestic animals from contagious diseases, is not inconsistent with the said act of Congress for the suppression and extinction of contagious diseases of cattle." Mr. Justice HARLAN observed:

"It is therefore a mistake to say that the Kansas statute, so far as it gives a right of action for injuries arising from diseases communicated to domestic cattle by cattle of a particular kind brought into the State, comes into conflict with any regulation established under the authority of Congress to prevent the spread of contagious diseases from one State to another."

But it clearly appears in that case that where *"the National Government, acting within the limits of its constitutional authority, takes under its immediate control and exclusive supervision the entire subject to which the State legislation may refer," the State has no power to interfere.* Under the acts of Congress referred to, and the regulations prescribed by the Department of Agriculture, Congress has not only legislated regarding the live stock yarded in the quarantine division of the yards, *but the National Government, "acting within the limits of its constitutional authority, has taken under its imme-*

diate control and exclusive supervision" such live stock. It has imposed duties and burdens upon the Stock Yards Company concerning these cattle which must be complied with, and therefore if the State may limit the charges for yardage in the quarantine division, it may thereby directly prevent the company from obeying the acts of Congress and the regulations of the Department of Agriculture made in pursuance thereof. If the State of Kansas has power to regulate the charges for yardage in the quarantine division, it might produce a conflict between the two governments in the exercise of their respective powers. The National Government compelling duties and burdens upon the company requiring services and expenditures, and the State Government prohibiting the company from making "but one yardage charge," and fixing the rate thereof. The Stock Yards Company "cannot serve two masters," in yarding the quarantine cattle and giving proper attention thereto. As the acts of Congress and the regulations of the Department of Agriculture are paramount to any regulation or order of the State of Kansas concerning the yardage of such cattle, the act of March 3d, 1897, is a nullity.

(See act of Congress of May 29th, 1884, 23 Stat. at L. 31, chap. 60; the act of March 3d, 1891, 26 Stat. at L. 1044-1049, chap. 544, appropriating money to carry out the provisions of that act; and § 5258 of the Revised Statutes, relating to the transportation of passengers, freight, property, &c.)

The Kansas statute of 1897 restricting the charges of the Stock Yards Company is not a quarantine law,—not an inspec-

tion law. It is a statute prescribing a rate of toll or compensation applicable not only to the quarantine division of the company, but also to the structure of the company connecting Kansas and Missouri, and thereby applicable to persons crossing from Kansas to Missouri and from Missouri to Kansas, a right which practically defeats the power of the National Government to exercise exclusive control over the live stock in the quarantine division, and also practically prevents the corresponding right of Missouri to fix tolls from her own State.

Neither do the recent cases decided by this court of *Anderson v. United States*, 171 U. S. 604, and *Hopkins v. United States*, 171 U. S. 578, conflict with our claim of interstate commerce in the driving of the live stock and the travel of their owners, their agents and employés, over the structure of the Stock Yards Company connecting Kansas and Missouri.

In the Anderson case, it was said:

"In the view we take of this case, we are not called upon to decide whether the defendants are or are not engaged in interstate commerce, because if it be conceded that they are so engaged, the agreement as evidenced by the by-laws, is not one in restraint of that trade, nor is there any combination to monopolize or attempt to monopolize such trade within the meaning of the act."

In the Hopkins case, it was decided that—

"The business of buying and selling live stock at stock yards in a city by members of a stock exchange as commission merchants is not interstate commerce."

And that—

"The fact that a State line runs through the stock yards, and

that sales may be made of a lot of stock in the yards which may be partly in one State and partly in another, has no effect to make the business of selling stock interstate commerce."

In that case, neither the Kansas City Live Stock Exchange nor the members thereof owned or operated any bridge or other structure connecting the States of Kansas and Missouri, or connecting any other States. The defendants in that case " were only commission merchants, who sold cattle upon commission as compensation for their services." That and nothing more. They derived no toll, compensation or charge from the operation of any bridge, viaduct or other structure in Kansas or Missouri. The fact " that the State line runs through the stock yards where they sold stock, and that the sales they made were partly in one State and partly in another, was not of the slightest materiality " to them in the transaction of their business.

The case of *Hopkins v. United States, supra,* has no more application to this case than it has to the Covington & Cincinnati Bridge Company case commented upon. But the decision in the last case, so far as the structures of the Stock Yards Company are used under the orders and directions of shippers of live stock and their agents and employés, is applicable to this case. The charges by the Stock Yards Company for the toll or use of the structures owned and operated by it, connecting Kansas with Missouri, are included in the charges and compensation received by the company for yardage. The act of March 3d, 1897, complained of, " is an attempted regulation of commerce, which it is not within the power of Kansas to make,"

as to the structures connecting the States of Kansas and Missouri.

The contention made by the Attorney-General that neither the Stock Yards Company, nor any of its viaducts, bridges or structures connecting the States of Kansas and Missouri, are instruments of interstate commerce or vehicles of such commerce, and therefore that neither the Stock Yards Company, nor any of its business comes within the commerce clause of the Constitution of the United States, is not supported, in our view, by the authorities.

There is a great variety of transactions which are protected by the commerce clause, in which parties did not even so much as contract for carriage. This will clearly appear from an examination of the cases, only a few of which can be mentioned here.

In *Brown v. Maryland, supra,* the State statute complained of imposed a tax on the occupation of importing property. No question of transportation was involved at all. In *McCall v. California, supra,* the railroad agent in San Francisco was engaged in soliciting passengers from that city to New York to use the roads represented by him from Chicago east. It is expressly stated that he did not sell tickets over his roads, nor receive any money on account thereof.

Leisy v. Hardin, supra.
Scott v. Donald, supra.

Welton v. Missouri, supra, was the case of a salesman solicit-

ing orders for sewing-machines upon his principals resident out of the State.

Robbins v. Shelby Co., 120 U. S. 489, was to precisely the same point.

Enough has been shown to justify the statement by us that not only is transportation not a necessary element in cases arising under the commerce clauses, but that any transaction in the course of the prosecution of interstate commerce is within the protection of that clause.

There is also a great variety of cases in which the property affected or the transaction involved is said to be an aid or instrument of commerce, and therefore within the local jurisdiction unless Congress has acted in respect of them. These cases may be sufficient for our present purpose, classified as follows:

1. One class of cases arises under State statutes imposing taxes upon property used in the transaction of interstate commerce. All the cases admit the power of the States to tax property within their jurisdiction. This power, even though the result of its exercise incidentally burdens or affects interstate commerce, does not conflict with the power of Congress. In *Gibbons v. Ogden, supra*, it is said:

"In imposing taxes for State property they [the States] are not doing what Congress is empowered to do. Congress is not empowered to tax for those purposes which are within the exclusive province of the States. When, then, each government exercises the power of taxation, neither is exercising the power of the other. But, when a State proceeds to regulate commerce among the several States, it is exercising the very power that is granted to Congress, and is doing the very thing Congress

is authorized to do. There is no analogy, then, between the power of taxation and the power of regulating commerce."

In *Adams Express Co. v. Ohio, supra,* it is said (page 218):

"Again and again has this court affirmed the proposition that no State can interfere with interstate commerce through the imposition of a tax, by whatever name called, which is in effect a tax for the privilege of transacting such commerce. And it has as often affirmed that such restriction upon the power of a State to interfere with interstate commerce does not in the least degree abridge the right of a State to tax at their full value all the instrumentalities used for such commerce."

This question has been a great many times before this court, and invariably the ruling has been that unless the taxing statute amounts to a regulation of the commerce it affects, it is not repugnant to the commerce clause of the Constitution. It is obvious, therefore, that the numerous decisions which hold that taxing laws of the States, which only incidentally interfere with interstate commerce and are not regulations of such commerce at all, have no application to a case where the act is in terms a regulation of the commerce which it affects.

This distinction is pointed out with unusual clearness in the case of *Henderson Bridge Co. v. Kentucky,* 166 U. S. 110, where it is said:

"The company was chartered by the State of Kentucky to build and operate a bridge, and the State could properly include the franchises it had granted in the valuation of the company's property for taxation. (*Central Pacific Railroad v. California,* 162 U. S. 91.) The regulation of tolls for transportation over the bridge considered in *Covington & Cincinnati Bridge Co. v.*

Kentucky, 154 U. S. 204, presented an entirely different question.

"Clearly, the tax was not a tax on the interstate business carried on over or by means of the bridge, because the bridge company did not transact such business. That business was carried on by the persons and corporations which paid the bridge company tolls for the privilege of using the bridge. The fact that the tax in question was to some extent affected by the amount of the tolls received, and therefore might be supposed to increase the rate of tolls, is too remote and incidental to make it a tax on the business transacted. This very question was decided in *Erie Railroad v. Pennsylvania*, 158 U. S. 431, 439, where it was said: 'It is argued that the imposition of a tax on tolls might lead to increasing them in an effort to throw their burthen on the carrying company. Such a result is merely conjectural, and, at all events, too remote and indirect to be an interference with interstate commerce. The interference with the commercial power must be direct, and not the mere incidental effect of the requirement of the usual proportional contribution to public maintenance.'"

The distinction between the tax cases and the class of cases to which, we insist, the case at bar belongs, is, that in all of the tax cases the tax affects interstate commerce incidentally or remotely, and does not amount to a regulation of interstate commerce; whereas, the statutes attempting to regulate the contractural burdens, such as bridge tolls, railroad rates, etc., amount to a direct definite attempt to regulate the commerce carried on over such bridges or railroads.

2. The other class of cases is that of wharves.

In all of these cases the controversy arose over the right of a municipality which owned the wharf to charge vessels engaged

in the interstate carrying trade reasonable sums for their use, or over the validity of a municipal regulation of the charges where an individual owned such convenience. In every case the right to charge such vessels a reasonable compensation for the use of such instrumentalities was upheld. The interstate carriers could not complain of the requirement that they should pay a reasonable sum for the use of the facility. The municipality owning such wharf stood in no different situation from an individual owner charging reasonable compensation for the use of his property; and in the case of the individual owner, the city simply limited his charges for the use of his property. It is expressly denied in all of these cases that a reasonable charge for the use of property amounts to a regulation of interstate commerce.

This is illustrated by what is said in *Gibbons v. Ogden, supra.* The Chief Justice says:

"A State, it is said, or even a private citizen, may construct lighthouses. But gentlemen must be aware, that if this proves a power in a State to regulate commerce, it proves that the same power is in the citizen. States or individuals who own lands, may, if not forbidden by law, erect on those lands what buildings they please; but this power is entirely distinct from that of regulating commerce."

In the wharfage cases, it is not asserted that the States possess the power to prescribe rules by which interstate commerce shall be governed; and obviously they have no application to a case where, as here, the State asserts the power to declare what price persons engaged in interstate trade shall pay for the privilege

of exposing for sale their property imported into the State and while it is still segregated from the common mass of property in such State.

As we have seen, an act which attempted to regulate tolls charged by a bridge company for the use of its property by persons engaged in interstate commerce was condemned as a regulation of that commerce. This case does not assert that the commerce clause abridges the right of a State to receive reasonable compensation from persons engaged in interstate commerce, for the use of structures erected by the State or municipality, but it does assert that no State has the power to prescribe the conditions upon which persons engaged in interstate trade shall use the property of another, to carry on their business, because the power to prescribe the rules by which interstate commerce should be governed does not reside in the States, but is placed elsewhere. A State might construct and maintain a railroad used by persons engaged in interstate traffic, and its right to regulate the charges for transportation could not be questioned; but the admission of this right does not admit the right of such State to regulate rates charged by other roads for such traffic. Thus it clearly appears that the wharfage cases are referable to another principle from that necessarily involved in the determination of the case at bar.

3. A third class is the elevator cases, in none of which the element of interstate commerce was involved.

In Munn's case, grain stored in the elevator was received,

part of it from Illinois and part of it from other States, and was, without reference to its origin, all commingled so that the owner of any particular assignment could not draw the identical grain stored for him, but only an equal amount taken from the whole mass. It did not appear that any of the grain stored in the elevator was to be forwarded *in specie*, to another State.

Upon this state of facts, no question could properly arise under the commerce clause of the Constitution. Notwithstanding these facts, Mr. Chief Justice WAITE, speaking for the majority of the judges in that case, said, on page 135:

"The warehouses of these plaintiffs in error are situated and their business carried on exclusively within the limits of the State of Illinois. They are used as instruments by those engaged in interstate commerce, but they are no more necessarily a part of commerce itself, than the dray or the cart by which, but for them, grain would be transferred from one railroad station to another. Incidentally, they may become connected with interstate commerce, but not necessarily so; their regulation is a thing of domestic concern; and certainly until Congress acts in reference to their interstate relations, the State may exercise all the powers of government over them, even though in doing so it may indirectly operate upon commerce outside its immediate jurisdiction."

The authority of this case as an exposition of the views of the Supreme Court in respect of the commerce clause has been completely overthrown.

In *Wabash Ry. Co. v. Illinois, supra,* Mr. Justice MILLER felt himself constrained to explain the circumstances of that decision for the purpose of overthrowing its authority on this question. He said:

"Of the members of the court who concurred in those opinions, there being two dissentients, but three remain, and the writer of this opinion is one of the three. He is prepared to take his share of the responsibility for the language used in those opinions, including the extracts above presented. He does not feel called upon to say whether those extracts justify the decision of the Illinois court in the present case. It will be seen, from the opinions themselves and from the arguments of counsel presented in the reports, that the question did not receive any very elaborate consideration ,either in the opinions of the court or in the arguments of counsel. And the question how far a charge made for a continuous transportation over several States, which included a State whose laws were in question, may be divided into separate charges for each State, in enforcing the powers of the State to regulate the fares of its railroads, was evidently not fully considered. These three cases, with others concerning the same subject, were argued at the same time by able counsel, and in relation to the different laws affecting the subject, of the States of Illinois, Iowa, Wisconsin and Minnesota; the main question in all the cases being the right of the State to establish any limitation upon the power of the railroad companies to fix the price at which they would carry passengers and freight. It was strenuously denied, and very confidently, by all the railroad companies, that any legislative body whatever had a right to limit the tolls and charges to be made by the carrying companies for transportation. And the great question to be decided, and which was decided, and which was argued in all those cases, was the right of the State within which a railroad company did business to regulate or limit the amount of any of these traffic charges.

"The importance of that question overshadowed all others; and the case of *Munn v. Illinois* was selected by the court as the most appropriate one in which to give its opinion on that subject, because that case presented the question of a private citizen, or unincorporated partnership, engaged in the ware-

housing business in Chicago, free from any claim of right or contract under an act of incorporation of any State whatever, and free from the question of continuous transportation through several States. And in that case the court was presented with the question, which it decided, whether anyone engaged in a public business, in which all the public had a right to require his service, could be regulated by acts of the Legislature in the exercise of this public function and public duty, so far as to limit the amount of charges that should be made for such services.

"The railroad companies set up another defense, apart from denying the general right of the Legislature to regulate transportation charges, namely, that in their charters from the States they each had a contract, express or implied, that they might regulate and establish their own fares and rates of transportation. These two questions were of primary importance; and though it is true that as incidental or auxiliary to these, the question of the exclusive right of Congress to make such regulations of charges as any legislative power had the right to make, to the exclusion of the States was presented, it received but little attention at the hands of the court, and was passed over with the remarks in the opinion of the court which have been cited. . . .

"We must, therefore, hold that it is not, and never has been, the deliberate opinion of a majority of this court that a statute of a State which attempts to regulate the fares and charges by railroad companies within its limits, for a transportation which constitutes a part of commerce among the States, is a valid law."

In *Covington Bridge Co. v. Kentucky, supra,* Mr. Justice Brown, speaking for the court, entered upon an elaborate examination and analysis of the cases, and cited Munn's case, and that of *Budd v. New York, supra,* and *Brass v. N. Dakota,* 153 U. S. 391, and concluded by saying (p. 217) that neither in Munn's case, nor in "the subsequent cases, has any

disposition been shown to limit or qualify the doctrine laid down in the Wabash case, and to that doctrine we shall adhere."

If there are other classes of cases upon the authority of which it is pretended that instrumentalities of interstate commerce, such as these yards, are mere aids to such commerce, and the services rendered by them are only remotely incident thereto, they may all be explained in much the same way as the three classes above examined.

Upon the testimony, authorities, and the argument presented upon the part of the appellants, it is confidently submitted that a dispassionate consideration of this record will induce the conclusion that the appellants are not without a remedy. We believe that the rights which the Constitution of the United States guarantees to every citizen will be observed, and that the Attorney-General of the State of Kansas will be enjoined from enforcing the provisions of the act of March 3d, 1897, against the Stock Yards Company, its officers, agents and employés. The appellants therefore pray that the final decree appealed from may be reversed and that the relief asked for by them be granted.

Respectfully submitted.

B. P. WAGGENER AND
ALBERT H. HORTON,
Of Counsel for Appellants.

TOPEKA, KANSAS, October 2, 1899.

APPENDIX.

EXHIBIT "A."

COMMITTEE SUBSTITUTE FOR HOUSE BILL No. 87.

AN ACT defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating all charges thereof, and removing restrictions in the trade of dead animals, and prescribing penalties for violations of this act.

Be it enacted by the Legislature of the State of Kansas:

SECTION 1. Any stock yards within this State, into which live stock is received for the purpose of exposing or having the same exposed for sale or feeding, and doing business for a compensation, and which for the preceding twelve months shall have had an average daily receipt of not less than one hundred head of cattle, or three hundred head of hogs, or three hundred head of sheep, are hereby declared to be public stock yards.

SEC. 2. Any person, company or corporation owning or operating such public stock yard or stock yards in this State, is hereby declared to be a public stock yards operator, whether living or being in this State or not.

SEC. 3. Every such public stock yards operator or operators shall annually, on the 31st day of December of each year, file with the Secretary of State an itemized statement certified and sworn to, setting forth the number of head of cattle, calves, hogs, horses and mules received in his or their public stock yards during the year next preceding.

SEC. 4. It shall be unlawful for the owners, proprietors, or the employés of the owners or proprietors of any such public stock yards within this State, to charge for driving, yarding, watering and weighing of stock, greater prices than the following: For driving, yarding, watering and weighing of cattle,

15 cents per head; calves, 8 cents per head; hogs, 6 cents per head; sheep, 4 cents per head; and there shall be but one yardage charged.

SEC. 5. It shall be unlawful for the owner, owners, or proprietors, or their employés, of any such stock yards in this State, to sell and deliver at the rate of less than two thousand pounds for a ton of hay, or any part thereof, the same to be of good quality, or to charge for or to sell the same at more than one hundred per cent. above the average market price, or value of such hay upon the markets of the towns or cities wherein such stock yards are located, upon the day preceding such sale and delivery; and it shall also be unlawful for any such owners, or proprietors, or employés, to sell and deliver less than seventy pounds of corn in the ear for a bushel, or less than fifty-six pounds of shelled corn for a bushel, or to charge for or to sell the same at more than one hundred per cent. above the average market price or value of such ear corn or shelled corn on the market of the towns or cities wherein said stock yards are located, on the day next preceding such sale and delivery. All feed not above named shall be sold for no greater per cent. or profit than hereinbefore provided.

SEC. 6. It shall be unlawful for the owners or proprietors of any stock yards to prohibit the owner or owners, or the representatives of any owner or owners of any dead stock in such yard or yards, from selling such dead stock to any person or persons.

SEC. 7. That any person or persons violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined for the first offense not more than one hundred dollars; for the second offense not less than one hundred dollars nor more than two hundred dollars; and for the third offense not less than two hundred dollars nor more than five hundred dollars, and by imprisonment in the county jail not exceeding six months for each offense; and for each subsequent offense he or they shall be fined in any sum not

less than one thousand dollars, and by imprisonment in the county jail not less than six months.

SEC. 8. It is hereby made the duty of the Attorney-General to prosecute all violations of the provisions of this act.

SEC. 9. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

SEC. 10. This act shall take effect and be in force from and after its publication in the official State paper.

I hereby certify that the above bill originated in the House, and passed that body March 1, 1897.

W. D. STREET,
Speaker of the House.

A. D. GILPIN,
Chief Clerk of the House.

Passed the Senate March 2, 1897.

A. M. HARVEY,
President of the Senate.

M. WATSON,
Secretary of the Senate.

Approved March 3, 1897.

J. W. LEEDY, *Governor.*

(R. 18-20, 41-42, *1764.*)

EXHIBIT "B."

STATE OF KANSAS, WYANDOTTE COUNTY, ss.

We, the undersigned,

C. F. Morse, of Kansas City, Missouri;
Wallace Pratt, of Kansas City, Missouri;
John D. Cruise, of Wyandotte, Kansas;
David E. Jones, of Rosedale, Kansas;
Morris E. Jones, of Wyandotte, Kansas,

under and in pursuance of the laws of the State of Kansas do hereby associate ourselves together and form a body politic and corporate, and do certify,

FIRST: The name of said corporation is

"KANSAS CITY STOCK YARDS COMPANY."

SECOND: The purposes for which said corporation is formed are the construction, maintenance and operation of Union Stock Yards, and of such buildings, hotels, railways and switches as may be necessary for that purpose.

THIRD: The places where the business of said corporation is to be transacted are in the county of Wyandotte and State of Kansas and in Jackson county in the State of Missouri.

FOURTH: The term for which said corporation shall exist is nine hundred and ninety-nine years.

FIFTH: The number of the directors of said corporation is nine, and the names and residences of those who are appointed for the first year are:

Charles Merriam, of Boston, Massachusetts;
H. H. Hunnewell, of Boston, Massachusetts;
Charles Francis Adams, jr., of Quincy, Massachusetts;
E. V. R. Thayer, of Boston, Massachusetts;
John A. Burnham, of Boston, Massachusetts;
S. B. Armour, of Kansas City, Missouri;
George Fowler, of Wyandotte, Kansas;
Charles W. Blair, of Leavenworth, Kansas;
V. J. Lane, of Wyandotte, Kansas.

SIXTH: The amount of the capital stock of said corporation is two million five hundred thousand dollars, and the number of shares into which it is divided is twenty-five thousand, of the par value of one hundred dollars each.

CHARLES F. MORSE.
MORRIS E. JONES.
J. D. CRUISE.
WALLACE PRATT.
DAVID E. JONES.

STATE OF MISSOURI, COUNTY OF JACKSON, ss.

On this 8th day of December, 1883, before the undersigned, a notary public within and for said county and State, personally appeared C. F. Morse, Wallace Pratt, John D. Cruise, David E. Jones, and Morris E. Jones, to me personally known to me to be the same persons whose names are subscribed to the foregoing instrument as parties thereto, and severally duly acknowledged that they executed the same for the purposes therein mentioned.

My commission as notary public will expire on the 12th day of September, 1886.

In witness whereof I have hereunto set my hand and affixed my official seal, the day and year first above written.

[SEAL.] J. P. DANA, *Notary Public.*

(R. *1870-1874.*)

EXHIBIT "C."

To the Honorable the Secretary of State of the State of Kansas:

We, the Board of Directors of the Kansas City Stock Yards Company, a corporation duly created and existing under and by virtue of the laws of the State of Kansas, and with an authorized capital of $2,500,000, do hereby certify that on the 6th day of June, 1887, in pursuance of a previous vote of a majority of the stockholders, we duly increased the capital stock of said company from two million five hundred thousand dollars ($2,500,000) to five million dollars ($5,000,000), in accordance with the provisions of Chapter 23 of the General Statutes of Kansas.

C. F. ADAMS.
H. H. HUNNEWELL.
V. THAYER.
[SEAL.] JOHN A. BURNHAM.
CHAS. MERRIAM.
V. J. LANE.
CHARLES W. BLAIR.
S. B. ARMOUR.
GEORGE FOWLER.

Attest: E. E. RICHARDSON, *Secretary.*

(R. *1870-1875.*)

EXHIBIT "D."

To the Honorable the Secretary of State of the State of Kansas:

We, the Board of Directors of the Kansas City Stock Yards Company, a corporation duly created and existing under and by virtue of the laws of the State of Kansas, and with an authorized capital of five million dollars ($5,000,000), do hereby certify that on the 7th day of February, 1894, we duly increased the capital stock of said company from five million dollars ($5,000,000) to seven million five hundred thousand dollars $7,500,000), in accordance with the provisions of Chapter 23 of the General Statutes of Kansas.

CHARLES F. ADAMS.
V. THAYER.
CHAS. MERRIAM.
[SEAL.] H. H. HUNNEWELL.
JOHN A. BURNHAM.
CHARLES W. BLAIR.
S. B. ARMOUR.
L. E. JAMES.
E. S. W. DROUGHT.

Attest: E. E. RICHARDSON, *Secretary.*

(R. *1870-1877.*)

EXHIBIT "E."

Extracts from the Senate Journal of the Legislature of the State of Kansas for 1897.

"FEBRUARY 9th, 1897.

CONSIDERATION OF MOTIONS AND RESOLUTIONS.

"Senate concurrent resolution No. 15 was read, and is as follows:

"*Whereas*, The Legislature of the State of Missouri has appointed a committee to confer with a similar one from the Legislature of Kansas, regarding the regulation and control of the stock yards located at Kansas City, Missouri, and Kansas City, Kansas; therefore, be it

"*Resolved by the Senate of the Legislature of Kansas, the House concurring therein*, That a committee consisting of five members, two from the Senate and three from the House, be appointed by the presiding officers of the respective bodies of the Legislature of Kansas, to meet and confer with the committee appointed by the Legislature of Missouri for the purpose above stated.

"The question being on the adoption of the resolution, a vote was taken and the resolution was adopted."

(Senate Journal of 1897, pages 394, 395.)

"FEBRUARY 10, 1897.

"The president announced as the committee on the part of the Senate, in accordance with Senate concurrent resolution No. 15, Messrs. Jumper and Morrow."

(Senate Journal of 1897, page 413.)

Extracts from the House Journal of the Legislature of the State of Kansas for 1897.

"FEBRUARY 10th, 1897.

"Message from the Legislature of the State of Missouri was read, and is as follows:

"HOUSE OF REPRESENTATIVES,

"JEFFERSON CITY, MO., February 5, 1897.

"Mr. Whitecotton offered the following resolution, which was read and adopted:

"*Whereas*, There appears to be a great demand by the farmers of the State for legislation regulating charges made by the stock yards of this State; and

"*Whereas*, The Legislature of Kansas has requested that this House appoint a committee to confer with a like committee appointed by the Legislature of Kansas to confer as to legislation affecting said charges; and

"*Whereas*, It is necessary that legislation on this subject be uniform in adjoining States:

"*Resolved*, That the speaker appoint a committee of the members of this House to correspond and confer with a like committee, if any, from each of the adjoining States, as to securing the necessary relief from any excessive charges and to secure uniform legislation on said subject, and to report back to this House the result of their investigation, with recommendations as to legislation as the committee may seem proper, at as early time as may be convenient.

"In compliance with the above resolution the speaker appointed the following committee: Messrs. Whitecotton, Macey, Aydelotte, Harrel, and Fitzgerald.

J. W. FARRIS, *Speaker*.

"Attest: R. P. THOMPSON, *Ass't Chief Clerk*.

"Mr. Harrel introduced the following resolution, which was read and adopted:

"*Whereas*, By resolution adopted by this House on the 5th day of February, 1897, a conference committee, composed of

five members, was appointed to confer with a like committee to be appointed by the Speaker of the House of Representatives at Topeka, Kansas, looking to the enactment of a uniform law relating to stock yard charges; therefore, be it

"*Resolved*, That the chief clerk of this House be instructed to forward a copy of said resolution to the Speaker of the House of Representatives, at Topeka, Kansas, with the request that a like committee be appointed by the Kansas House of Representatives, to the end that an early conference between the two houses may be obtained.

J. W. FARRIS, *Speaker.*

"Attest: R. P. THOMPSON, *Ass't Chief Clerk.*

"Senate concurrent resolution No. 14 was read, and is as follows:

"*Whereas*, The Legislature of the State of Missouri has appointed a committee to confer with a similar one from the Legislature of Kansas regarding the regulation and control of the stock yards located at Kansas City, Mo., and Kansas City, Kas.; therefore, be it

"*Resolved, by the Senate of the Legislature of Kansas, the House concurring therein*, That a committee consisting of five members, two from the Senate and three from the House, be appointed by the presiding officer of the respective bodies of the Legislature of Kansas to meet and confer with the committee appointed by the Legislature of Missouri for the purpose above stated.

"The resolution was adopted.

ANNOUNCEMENTS.

"The Speaker appointed the following committee on the part of the House to meet with the like committee of the Legislature of Missouri: Jaquins, Ravenscraft, and Johnson of Nemaha."

(House Journal of 1897, pages 428, 429.)

"FEBRUARY 17th, 1897.

"By unanimous consent, Mr. Jaquins, chairman of the select committee, submitted the following report:

"MR. SPEAKER: Your Committee on Live Stock, to whom was referred joint conference committee to meet a like committee from the State of Missouri, at Kansas City, beg leave to make the following report:

"MR. SPEAKER: Your Committee on Live Stock, appointed under Senate concurrent resolution by yourself and the chairman of this committee, in company with the Senate committee, went to Kansas City, Mo., and there met the committee from the Assembly of the State of Missouri at the Midland Hotel. We organized said conference committee on February 15, at 10 A. M., by electing the Hon. J. H. Whitecotton, of the Missouri Assembly, as chairman, and Senator Morrow, of the Kansas Legislature, as secretary of said joint committee.

"We then thoroughly discussed the merits of substitute for House bill No. 87, as reported by the Committee on Live Stock in this House, and your committee on conference decided that it would be judicious and wise legislation, and practically agreed to said substitute, and that it would be a good bill to enact into law to produce uniform legislation in both States.

"Your committee found the committee from the Missouri Assembly great, broad-minded, intelligent gentlemen, thoroughly imbued with a spirit of substantial and true reform in the interest of the whole people, rather than men bowed down to the greed of corporations and corporation attorneys.

"Hoping, Mr. Speaker, that the results of our labor will be gratifying to yourself and the members of this House, we most respectfully submit this report.

EDWARD JAQUINS, *Chairman.*"

(House Journal of 1897, page 598; R. 814-817.)

EXHIBIT "F."

SUMMARY

Of Annual Statement of Receipts and Disbursements of 275 State Banks doing business in the State of Kansas for the year ending December 31, 1897.

RECEIPTS.

Undivided profits January 1, 1897	$392,895.39
Interest and discount	1,345,196.01
Exchange	128,233.51
Rents	51,847.58
Commissions	26,091.89
Profit on real estate sold	2,473.51
Assessment on capital	4,000.00
Increase of capital	5,400.00
Reduction of capital	188,201.00
From surplus	89,551.11
All other sources	42,439 76
Total	$2,276,329.76

DISBURSEMENTS.

Officers' salaries	$355,323.57
Clerk hire	68,009.84
Rent	27,531.94
Insurance	8,021.42
Taxes	94,974.00
Interest on deposits	153,453.00
Interest on borrowed money	24,208.50
Dividends	283,018.55
Carried to surplus	132,203.15
Bad paper charged off	317,072.27
Loss on real estate sold	6,038.85
Depreciation of real estate	132,957.62
Depreciation of furniture and fixtures	30,050.27
All other purposes	182,343.26
Balance undivided profits	461,033.52
Total	$2,276,329.76

Average capital invested during year	$6,106,665.68
Gross earnings	1,596,282.26
Per cent. of gross earnings to capital	26.13
Number of banks paying dividends	146
Capital on which dividends were paid	3,574,900.00
Average dividend paid (per cent.)	7.91
Number of banks paying no dividend	129
Capital on which no dividend was paid	2,731,765.68
Per cent. of dividends to total capital	4.63
Per cent. of officers' salaries to total capital	5.82
Per cent. of taxes to total capital	1.55

(Fourth Biennial Report of State Bank Commissioner of Kansas, 1897-98, page 218.)

EXHIBIT "G."

SUMMARY

Of Annual Statement of Receipts and Disbursements of 95 Private Banks doing business in the State of Kansas for the year ending December 31, 1897.

RECEIPTS.

Undivided profits, January 1st, 1897	$131,521.13
Interest and discount	376,817.64
Exchange	36,187.31
Rents	22,467.35
Commissions	10,922.76
Profit on real estate sold	1,680.61
Reduction of capital	69,000.00
Received from owners	33,322.67
Increase of capital	6,000.00
Surplus charged off	13,900.00
All other sources	5,827.97
Total	$707,627.44

DISBURSEMENTS.

Officers' salaries	$69,385.02
Clerk hire	30,022.00
Rent	5,432.98
Insurance	2,759.59
Taxes	28,328.11
Interest on deposits	34,597.87
Interest on borrowed money	5,066.46
Dividends	113,829.97
Carried to surplus	54,766.56
Bad paper charged off	135,643.94
Loss on real estate sold	347.15
Depreciation of real estate	29,174.50
Depreciation of furniture and fixtures	11,530.67
All other purposes	48,726.34
Balance undivided profits	138,024.28
Total	$707,627.44

Average capital invested during year	$132,943.51
Gross earnings	585,404.77
Per cent. of gross earnings to capital	44.00
Number of banks paying dividends	48.00
Capital on which dividend was paid	627,380.00
Average dividend paid (per cent.)	18.14
Number of banks paying no dividend	47
Capital on which no dividend was paid	702,051.57
Per cent. of dividends to total capital	8.56
Per cent. of officers' salaries to total capital	8.22
Per cent. of taxes paid to total capital	2.13

(Fourth Biennial Report of State Bank Commissioner of Kansas, 1897-98, page 219.)

EXHIBIT "H."

EXTRACTS FROM THE AUDITOR'S REPORT FOR THE STATE OF KANSAS FOR 1897-98, CONCERNING MUNICIPAL BONDS AND THE RATES OF INTEREST THEREON.

Name of County, Township, etc.	*Purpose Created.*	*Date of Issue.*	*Date of Maturity.*	*Rate.*	*Amount.*
ALLEN COUNTY.					
Marmaton township	St. L. S. & W. R. R.	Sept. 1, 1887.	Sept. 1, 1901.	7	$30,000
Iola township	" "	" "	" "	7	35,500
Elm township	" "	" "	" "	7	20,000
Iola City	" "	" "	" "	7	26,500
ANDERSON COUNTY.					
Anderson county	L. L. & G. R. R.	Jan. 1, 1870.	Jan. 1, 1900.	7	9,000
Ozark township	St. L. & F. R. R.	July 31, 1886.	July 31, 1916.	7	16,000
Indian Creek township	" "	July 31, 1887.	July 15, 1917.	7	10,000
BARBER COUNTY.					
Barber county	Funding			8	143,000
Medicine Lodge township	Bridge bonds	Jan. 30, 1886.	July 1, 1916.	7	10,000
Kiowa township	Railroad bonds	April 1, 1887.	July 1, 1907.	7	25,000
Hazelton township	" "	Mar. 1, 1889.	Mar. 1, 1907.	7	15,000
BUTLER COUNTY.					
El Dorado City	St. L. Ft. S. & W. Ry	Jan. 22, 1883.	Jan. 22, 1903.	7	2,500
" "	Improvement	Aug. 1, 1883.	Aug. 1, 1903.	7	7,000
Augusta township	St. L. & S. F. R. R.	June 5, 1880.	May 5, 1910.	7	23,000
Benton township	St. L. Ft. S. & W. Ry	Jan. 1, 1883.	July 1, 1903.	7	6,500
Bruno township	St. L. & S. F. R. R.	June 5, 1880.	May 5, 1910.	7	17,000
CHEROKEE COUNTY.					
City of Columbus	R. R. funding bonds	Oct. 24, 1876.	Oct. 24, 1896.	10	12,000
Weir City	Water bonds	June 30, 1887.	June 30, 1897.	10	1,000
CHEYENNE COUNTY.					
Wano township	Building bridge	Jan. 16, 1889.	Jan. 1, 1899.	10	1,000
CLAY COUNTY.					
Clay county	J. C. & Ft. K. R. R.	Feb. 16, 1872.	Feb. 16, 1892.	7	13,000
" "	Bridge	Aug. 4, 1885.	Aug. 4, 1905.	7	10,000
CLOUD COUNTY.					
Elk township	Bridge	July 1, 1878.	July 1, 1898.	10	8,000
" "	Railroad	Sept. 1, 1879.	Sept. 1, 1899.	8	7,850
" "	"	Oct. 1, 1879.	Oct. 1, 1898.	8	12,150
Solomon township	"	Nov. 1, 1879.	Nov. 1, 1899.	8	7,000
" "	Bridge	Jan. 1, 1885.	Jan. 1, 1895.	8	2,000
COFFEY COUNTY.					
Avon township	K. C. B. & S. F. Ry.	Mar. 31, 1877.	Mar. 31, 1907.	7	87,000
Leroy township	St. L. & E. R. R.	Jan. 21, 1887.	Jan. 21, 1917.	7	5,000
Liberty township	Interstate R. R.	July 14, 1887.	Apl. 25, 1917.	7	10,000
" "	" "	Apl. 25, 1887.	July 14, 1917.	7	5,000
Neosho township	" "	Oct. 6, 1886.	Apl. 25, 1917.	7	10,000
ELK COUNTY.					
Elk Falls township	K. C. L. & S. K. Ry.	Oct. 1, 1879.	Oct. 1, 1909.	7	15,000
Wild Cat township	" " "	" "	" "	7	4,000
Pawpaw township	K. C. & S. Ry	Jan. 1, 1880.	Jan. 1, 1910.	8	8,000
Howard township	" " "	" "	" "	8	24,000
Greenfield township	K. C. L. & S. K. Ry.	Dec. 1, 1879.	Dec. 1, 1909.	7	11,500
HAMILTON COUNTY.					
Syracuse township	Bridge	June 1, 1887.	July 1, 1897.	8	4,500
Syracuse City	Improvement	Jan. 1, 1888.	July 1, 1908.	7	3,000
" "	City hall	July 2, 1888.	July 1, 1909.	7	7,500
Coolidge City	School bonds	June 5, 1887.	Jan. 1, 1902.	7	11,000
HASKELL COUNTY.					
Old Review township	Poor-farm	June 6, 1889.	July 6, 1909.	7	1,500

EXHIBIT "H"—CONCLUDED.

Name of County, Township, etc.	*Purpose Created.*	*Date of Issue.*	*Date of Maturity.*	*Rate.*	*Amount.*
HODGEMAN COUNTY.					
Sterling township	Bridge	Oct. 10, 1885.	Oct. 10, 1897.	8	$500
" "			Oct. 10, 1898.	8	500
" "			Oct. 10, 1899.	8	500
" "			Oct. 10, 1900.	8	500
KEARNY COUNTY.					
South Side township		Dec. 21, 1886.	1906.	8	12,578
Lakin township	Bridge	Jan. 18, 1896			
LINN COUNTY.					
Linn county	Jail and sheriff's res.	Aug. 25, 1896.	Feb. 1, 1909.	7	
Blue Mound township	St. L. & E. R. R.	May 20, 1895.	Apl. 10, 1912.	7	25,000
LABETTE COUNTY.					
Oswego township	M. W. Ry	Dec. 30, 1876.	Jan. 1, 1897.	10	2,200
Richland township	M. K. & T. Ry	July 1, 1870.	July 1, 1900.	7	50,000
Pleasant township	St. L. W. & W. Ry	Nov. 14, 1879.	July 1, 1909.	7	9,000
M'PHERSON COUNTY.					
Smoky Hill township	Railroad	Sept. 3, 1879.	Sept. 3, 1909.	7	14,740
McPherson township	"	Jan. 1, 1880.	Jan. 1, 1910.	7	20,000
MONTGOMERY COUNTY.					
Montgomery county	L. L. & G. R. R.	July 2, 1877.	July 2, 1897.	7	153,000
Louisburg township	S. K. R. R	Aug. 7, 1879.	Aug. 1, 1909.	7	15,000
MITCHELL COUNTY.					
Mitchell county	A. S. V. & D. Ry.	Sept. 16, 1878.	Sept. 16, 1908.	8	50,000
Cawker township	" "	May 31, 1879.	May 31, 1909.	8	20,000
Glen Elder township	" "	" "	" "	8	5,000
NEOSHO COUNTY.					
Mission township	Bridge		June 1, 1902.	10	40,000
NORTON COUNTY.					
Norton City	C. K. & N. R. R.	Dec. 1, 1880.	Dec. 1, 1900.	10	200
OSBORNE COUNTY.					
Sumner township	Railroad	Dec. 20, 1879.	Dec. 20, 1909.	8	15,000
Penn township	"	Aug. 15, 1879.	Sept. 15, 1909.	8	15,000
RICE COUNTY.					
Lyons City	Waterworks	Sept. 22, 1885.	Sept. 1, 1900.	7	2,000
" "	"	" "	Sept. 1, 1907.	7	3,000
SALINE COUNTY.					
City of Brookville	City hall	July 1, 1879.	July 1, 1899.	10	2,000
SCOTT COUNTY.					
Ninnescah township	St. L. Ft. S. & W. Ry.	Aug. 1, 1884.	Aug. 1, 1904.	7	22,000
Ohio township	" " "	" "	" "	7	10,000
SUMNER COUNTY.					
City of Caldwell	Funding	Aug. 11, 1882.	Aug. 11, 1897.	8	3,000
" "	Bridge	" "	" "	8	2,500
WASHINGTON COUNTY.					
Washington township	Railroad	July 1, 1877.	Jan. 1, 1907.	10	26,000
WILSON COUNTY.					
Center township	C. V. & L. Ry	July 1, 1886.	July 1, 1916.	7	25,000
Prairie township	" "	" "	" "	7	15,000
Center township	C. K. & W. R. R.	Nov. 1, 1886.	Nov. 1, 1916.	7	25,000

(Extracts from the Eleventh Biennial Report of the Auditor of State of the State of Kansas for 1897–98. See pages 186–223.)

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No. 43 #1.

Motion to postpone

Filed Oct. 9, 1899

Office Supreme Court U. S.
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JAMES H. McKENNEY,
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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

CHARLES U. COTTING AND FRANCIS LEE HIGGINSON, *Appellants*,
vs.
A. A. GODARD, AS ATTORNEY-GENERAL OF THE STATE OF KANSAS, AND THE KANSAS CITY STOCK YARDS COMPANY, *et al.*, *Appellees*.
} No. 43.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

MOTION FOR POSTPONEMENT UNTIL A FULL COURT CAN HEAR THE APPEAL.

WILLIAM D. GUTHRIE,
B. P. WAGGENER, AND
ALBERT H. HORTON,
Of Counsel for Appellants.

CRANE & CO., TOPEKA.

IN THE

Supreme Court of the United States.

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vs.
A. A. GODARD, AS ATTORNEY-GENERAL OF THE STATE OF KANSAS, AND THE KANSAS CITY STOCK YARDS COMPANY, *et al.*, *Appellees*.
No. 43.

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MOTION FOR POSTPONEMENT UNTIL A FULL COURT CAN HEAR THE APPEAL.

COME now Charles U. Cotting and Francis Lee Higginson, appellants, by their counsel, and show to the Court that the questions to be presented in this appeal plainly involve a construction of the Federal Constitution, and the determination of rights, privileges and immunities which it is claimed by appellants are protected by its provisions; (Record, 6-7, 28-29, 31, 940-947;) and that as a full Court will not be present at the time this cause has been assigned upon the docket for hearing at this term, on account of the absence of the Chief Justice and

Mr. Justice BREWER, who are abroad as members of the Anglo-Venezuelan Boundary Commission, and as it is confidently expected that the absent Justices will be present at an early day during the term; therefore, appellants move the Court for a postponement of said cause to some later day in the term, when a full Court can hear the case.

Appellants, in support of their motion, call attention that this Court, early in its history, adopted a practice, which has since been adhered to, of requiring constitutional questions to be heard by a full Bench, in order that the judgment in such a case might, if possible, be the decision of a majority of the whole Court.

In *Briscoe v. Commonwealth Bank*, 8 Peters, 118, and *City of New York v. Milne*, 8 Peters, 120, Chief Justice MARSHALL announced the following rule:

"The practice of this Court is, not (except in cases of absolute necessity) to deliver any judgment in cases where constitutional questions are involved, unless four judges concur in the opinion, thus making the decision that of a majority of the whole Court. In the present case four judges do not concur in opinion as to the constitutional questions which have been argued. The Court therefore direct these cases to be reargued at the next term, under the expectation that a larger number of the judges may then be present."

The same cases were again called, at the next term of the Court, and the Chief Justice said:

"The Court cannot know whether there will be a full Court during the term; but as the Court is now composed, the constitutional cases will not be taken up." (9 Peters, 85.)

The rule laid down by Chief Justice MARSHALL has been followed and applied. Thus, in *Home Insurance Co. v. New York*, 119 U. S. 129, 148, Chief Justice WAITE announced that the judgment of the Supreme Court of the State of New York was affirmed by a divided Court. At that time, Mr. Justice Woods was ill and absent during the whole of the term, and took no part in any of the cases argued at that term. There were, therefore, only eight members of the Court. A petition for a reargument was presented upon the ground that the principle announced by Chief Justice MARSHALL should be followed, and that the constitutional question involved was sufficiently important to demand a decision concurred in by a majority of the whole Court. This petition was granted. (122 U. S. 636.) In the meantime, Mr. Justice Woods had died. The case was not reargued until after the appointment of Mr. Justice LAMAR, and resulted in the affirmance of the judgment below in an opinion by Mr. Justice FIELD, in which six Justices concurred—Mr. Justice MILLER and Mr. Justice HARLAN dissenting. (134 U. S. 594, 597.)

Wherefore, appellants pray that the foregoing application be granted.

WILLIAM D. GUTHRIE,
B. P. WAGGENER, AND
ALBERT H. HORTON,
Of Counsel for Appellants.

We accept service of the foregoing motion, and also of notice that the same will be presented for hearing to the Court on Monday, October 9th, 1899, at twelve o'clock M., or as soon thereafter as counsel can be heard; and we also consent to the postponement of the hearing of the above appeal in this Court, on account of the constitutional questions involved, to some later day during the term at which a full Court shall be present.

A. A. GODARD,
Attorney-General of the State of Kansas.

WALLACE PRATT,
Counsel for other Defendants.

TOPEKA, KANSAS,
October 3, 1899.

No. 43. 1

Brief of Guthrie, Horton & Waggener for Appellants

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Supreme Court of the United States.

OCTOBER TERM, 1899.

Filed Nov. 9, 1899.

No. 43.

CHARLES M. COTTING and FRANCIS LEE HIGGINSON,
Appellants,

vs.

A. A. GODARD, as Attorney-General of the State of Kansas, and the KANSAS CITY STOCK-YARDS COMPANY, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

BRIEF IN REPLY TO ARGUMENT OF ATTORNEY-GENERAL OF KANSAS.

WILLIAM D. GUTHRIE,
ALBERT H. HORTON,
B. P. WAGGENER,
Of counsel for appellants.

WASHINGTON, October Term, 1899.

Supreme Court of the United States.

OCTOBER TERM, 1899.

NO. 43.

CHARLES M. COTTING and FRANCIS LEE HIGGINSON, *Appellants*,

vs.

A. A. GODARD, as Attorney-General of the State of Kansas, and the KANSAS CITY STOCK-YARDS COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

BRIEF IN REPLY TO ARGUMENT OF ATTORNEY-GENERAL OF KANSAS.

POINTS DISCUSSED.

I. The jurisdiction of the court (pp. 1-8).
II. The nature of the questions presented (pp. 8-18).
III. The effect of the statute on the gross and net earnings of the stock-yards company (pp. 18-30).
IV. The fair present value of the stock-yards property and of its capital stock (pp. 31-39).
V. The value in themselves of the services rendered and the reasonableness of the customary charge collected by the stock-yards company (pp. 39-80).
VI. The act of March 3, 1897, has no extra-territorial effect and does not apply to the feed business of the stock-yards company (pp. 80-86).

I.

THE JURISDICTION OF THE COURT.

The equitable relief sought by the bills of complaint was two-fold; first, as to the defendant company and its officers, and, secondly, as to the Attorney-General of Kansas.

Under the first head, the complainants, as stockholders of the defendant company, sought to enjoin its officers from complying with an unconstitutional statute which, it was alleged, deprived the company of its property without due process of law and denied to it the equal protection of the laws in violation of the Fourteenth Amendment. The controversy not only arose under the Constitution of the United States, but there was in addition a diversity

of citizenship and the fullest compliance with equity rule 94 (record, pp. 13–15, 19, 34–36, 39–40). The bills were in all respects within the doctrine of *Dodge* v. *Woolsey*, 18 How. 331, 341; *Pollock* v. *Farmers' Loan & Trust Co.*, 157 U. S. 429, 553, and *Smyth* v. *Ames*, 169 U. S. 466, 517. After all the testimony had been taken in the course of an unusually fierce adversary litigation, Attorney-General Boyle felt justified in expressly admitting of record that there was no collusion in the suit as between the complainants and the defendant company or its officers (pp. 874, 875). The suits, therefore, as to the defendants other than the Attorney-General, were indisputably within the jurisdiction of the court below; and, as all the issues on the merits have been thoroughly litigated and contested in every aspect, there can be no suggestion that the ends of justice will not be served by exercising the equitable jurisdiction in such a case. It affords an investigation of the merits of such a controversy in the only adequate form. Mr. Justice Miller said in *Chicago, &c., Railway Co.* v. *Minnesota*, 134 U. S. 418, 460:

> "6. That the proper, if not the only, mode of judicial relief against the tariff of rates established by the legislature or by its commission, is by a bill in chancery asserting its unreasonable character and its conflict with the Constitution of the United States, and asking a decree of court forbidding the corporation from exacting such fare as excessive, or establishing its right to collect the rates as being within the limits of a just compensation for the service rendered.
>
> "7. That until this is done it is not competent for each individual having dealings with the carrying corporation, or for the corporation with regard to each individual who demands its services, to raise a contest in the courts over the questions which ought to be settled in this general and conclusive method."

It is true that decrees *pro confesso* were entered against the defendant company and its officers, but this could not

deprive the complainants of relief below or here. If they had been the only defendants and the litigation had rested there, an injunction would, of course, have issued against them, and there would have been no appeal to this court. However, the court entered a decree dismissing the bills on the merits, and this necessarily vacated the decrees *pro confesso*, and left the case as to all the defendants with a decree dismissing the suits on the merits. *Frow* v. *De La Vega*, 15 Wall. 552, 554; *Hohorst* v. *Hamburg-American Packet Co.*, 148 U.S. 262, 265; *Kopper* v. *Dyer*, 59 Vt. 477, 489. The appeal was taken in open court as to all the defendants; there was no severance; and all the defendants have appeared in this court.

Under the second head, which involves the question of the jurisdiction of a federal court to enjoin a state officer from enforcing an unconstitutional statute when such enforcement would obviously interfere with and destroy the property rights of the citizen, it is submitted that the case is within the settled doctrine of this court, as reiterated in *Smyth* v. *Ames*, 169 U. S. 466, 518, which was a case very similar to the case at bar, brought by a stockholder seeking among other things to enjoin the attorney-general of a state.

The act of March 3, 1897, involved in this controversy, expressly charges the Attorney-General, section 8, with the enforcement of the act, and obviously its enforcement will involve the defendant company and its stockholders in a ruinous multiplicity of suits, for there would be thousands of violations of the law each day, and the penalties incurred would be fabulous.

The Attorney-General relies, however, upon the case of *Fitts* v. *McGhee*, 172 U. S. 516, and apparently upon the idea that this decision practically overruled the cases

from *Reagan* v. *Farmers' Loan & Trust Co.* to *Smyth* v. *Ames.* This is an erroneous view, for Mr. Justice Harlan, in delivering the opinion of the court in *Fitts* v. *McGhee*, 172 U. S. at p. 529, carefully stated:

> "It is to be observed that neither the Attorney General of Alabama nor the Solicitor of the Eleventh Judicial Circuit of the State appear to have been charged by law with any special duty in connection with the act of February 9, 1895. In support of the contention that the present suit is not one against the State, reference was made by counsel to several cases, among which were *Poindexter* v. *Greenhow*, 114 U. S. 270; *Allen* v. *Baltimore & Ohio Railroad*, 114 U. S. 311; *Pennoyer* v. *McConnaughy*, 140 U. S. 1; *In re Tyler*, 149 U. S. 164; *Reagan* v. *Farmers' Loan and Trust Co.* 154 U. S. 362, 388; *Scott* v. *Donald*, 165 U. S. 58, and *Smyth* v. *Ames*, 169 U. S. 466. Upon examination it will be found that the defendants in each of those cases were officers of the State, specially charged with the execution of a state enactment alleged to be unconstitutional, but under the authority of which, it was averred, they were committing or were about to commit some specific wrong or trespass to the injury of the plaintiff's rights.

In *Smyth* v. *Ames* Mr. Justice Harlan, among other things, said (169 U. S. at pp. 518, 519):

> "It would therefore be sufficient to say that these are cases of which, so far as the plaintiffs are concerned, the Circuit Court has jurisdiction not only upon the ground of the diverse citizenship or alienage of the parties, but upon the further ground that, as the statute of Nebraska under which the State Board of Transportation proceeds is assailed as being repugnant to rights secured to the plaintiffs by the Constitution of the United States, the cases may be regarded as arising under that instrument. But to prevent misapprehension, we add that, within the meaning of the Eleventh Amendment of the Constitution, the suits are not against the State but against certain individuals charged with the administration of a state enactment, which, it is alleged, cannot be enforced without violating the constitutional rights of the plaintiffs. It is the settled doctrine of this court that a suit against individuals for the purpose of preventing them as officers of a State from enforcing an unconstitutional enactment to the injury of the rights of the plaintiff, is not a suit against the State within the meaning of

that Amendment. *Pennoyer* v. *McConnaughy*, 140 U. S. 1, 10; *In re Tyler*, 149 U. S. 164, 190; *Scott* v. *Donald*, 165 U. S. 58, 68; *Tindal* v. *Wesley*, 167 U. S. 204, 220."

The language of Mr. Justice Brewer in *Reagan* v. *Farmers' Loan & Trust Co.*, 154 U. S. 362, 390, seems also precisely in point. That suit was brought against the individuals composing the state railroad commission, the attorney-general of the state, and the railroad company whose rates were affected by the legislation drawn in question. Mr. Justice Brewer said:

"Appellants invoke the doctrines laid down in these two quotations, and insist that this action cannot be maintained because the real party against which alone in fact the relief is asked and against which the judgment or decree effectively operates is the State, and also because the statute under which the defendants acted and proposed to act is constitutional, and that the action of state officers under a constitutional statute is not subject to challenge in the Federal court. We are unable to yield our assent to this argument. So far from the State being the only real party in interest, and upon whom alone the judgment effectively operates, it has in a pecuniary sense no interest at all. Going back of all matters of form, the only parties pecuniarily affected are the shippers and the carriers, and the only direct pecuniary interest which the State can have arises when it abandons its governmental character and, as an individual, employs the railroad company to carry its property. There is a sense, doubtless, in which it may be said that the State is interested in the question, but only a governmental sense. It is interested in the well-being of its citizens, in the just and equal enforcement of all its laws; but such governmental interest is not the pecuniary interest which causes it to bear the burden of an adverse judgment. Not a dollar will be taken from the treasury of the State, no pecuniary obligation of it will be enforced, none of its property affected by any decree which may be rendered. It is not nearly so much affected by the decree in this case as it would be by an injunction against officers staying the collection of taxes, and yet a frequent and unquestioned exercise of jurisdiction of courts, state and Federal, is in restraining the collection of taxes, illegal in whole or in part."

The question of jurisdiction was not discussed in the principal brief because it was assumed that the Attorney-

General of Kansas, representing the public using the yards, desired a speedy determination upon the merits, and recognized the essential propriety of this form of procedure instead of the harassment and vexation of innumerable suits and arrests.

Although the point of jurisdiction was made below on the original application for a preliminary injunction, yet, as Foster, D. J., then said (*Cotting* v. *Kansas City Stock-yards Co.*, 79 Fed. Rep., 679, 681):

> "There has been some discussion about the jurisdiction of this court, *but it is not seriously challenged;* and the objection by the attorney general that he is improperly made a party defendant is not well taken, as the court has jurisdiction to enjoin a state officer from enforcing an unconstitutional law. *Reagan* v. *Trust Co.*, 154 U. S. 388, 14 Sup. Ct. 1047."

It is to be regretted that Attorney-General Boyle, if he intended to insist upon the point of jurisdiction under the Eleventh Amendment, did not raise that defense in the ordinary form of a plea or demurrer, and have the question promptly certified to this court. If the decision had then been adverse, the complainants could have proceeded in a state court, and great labor, expense and delay would have been avoided.

It is, therefore, deemed pertinent to inquire whether it may not be reasonably said that Attorney-General Boyle, in view of the full investigation and adversary contest upon the merits conducted by him below, has waived the question of jurisdiction under the Eleventh Amendment. In *Clark* v. *Barnard*, 108 U. S. 436, it was held that a state may waive its constitutional immunity from suit by voluntary appearance and submission to jurisdiction.

The bill of complaint in the *Cotting* suit was filed March 13, 1897 (p. 20), and in the *Higginson* suit March 26, 1897 (p. 42). Thereupon, on April 3, Attorney-General

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Boyle filed in each suit certain "objections to the bill of complaint," in none of which objections was there any mention of the Eleventh Amendment. Subsequently, and on April 5, Attorney-General Boyle filed a general appearance in each suit, in which he stated as follows:

> "Now comes the defendant, L. C. Boyle, Attorney-General of Kansas, and enters his appearance in the suit, and to the complainant's bill of complaint therein."

Thereafter, and on June 21, 1897, the Attorney-General filed a demurrer in which no mention whatever was made of the Eleventh Amendment; but, on the contrary, as the court will find in the third ground of demurrer, Attorney-General Boyle seemed to invite a suit against the State of Kansas, for he said:

> "And this defendant has no personal interest whatever in said controversy other than such as pertains to every citizen of the State of Kansas, *and said State of Kansas is not made a party to said bill.*"

Without desiring to urge any technicality, it does seem fair to say that, if Attorney-General Boyle had then intended to insist that the judicial power of the court did not extend to him because the suit against him was in effect a suit against the State of Kansas, he would have so pleaded. We can, therefore, quite understand the statement of Judge Foster that the jurisdiction was "not seriously challenged."

After the filing of this demurrer, the taking of testimony was proceeded with under an order of the court providing that a master should be appointed with power to take testimony and report the same with his findings (p. 52). Testimony was taken by both sides under this order, and the application for a preliminary injunction then argued. On this testimony, Foster, D. J., denied the application on October 4, 1897 (p. 874). Subsequently,

and on October 15th, the demurrer of the Attorney-General, which, to repeat, did not specifically set up the Eleventh Amendment, was overruled, and answers on the merits were filed by him in each suit on October 15 (pp. 877, 906, 907, 937), to which replications were duly filed by the complainants on the same day (pp. 937, 938). In the answers so filed, Attorney-General Boyle for the first time specifically pleaded the Eleventh Amendment; but the point was not pressed or argued, and for this reason it received no attention from Thayer, C. J., in the opinion dismissing the bills upon the merits.

In equity it is always the practice to plead jurisdiction at the proper time and before a defendant enters into his defense at large. This is obviously a necessary rule for the due and orderly administration of justice, and to prevent parties from taking chances upon the merits and then reserving for their benefit the point of jurisdiction which, would "overthrow protracted, extensive and costly proceedings carried on in reliance upon its consent. Surely no such imperfection attends the administration of a court of equity. Good faith and early assertion of rights are as essential on the part of the defendant as of the complainant." Mr. Justice Brewer in *Brown* v. *Lake Superior Iron Co.*, 134 U. S. 530, 535.

It is, therefore, submitted that the jurisdiction of the court to hear and determine this controversy upon the merits is ample in both aspects of the issues framed by the bills of complaint.

II.

The nature of the questions presented.

Before re-examining the facts and points of law presented by the record, it will be interesting to observe that

the court is now called upon for the first time to adjudge what elements should be considered in determining the compensation that an owner of private property which has become impressed with a public interest is entitled to charge or receive for the use of his property, when such owner performs no public function and enjoys or exercises no special franchise from the state. In all the previous cases affecting any such private business, the controversy was as to the existence of the power to regulate, and in no way touched upon the reasonableness of the rates prescribed. *Munn* v. *Illinois*, 94 U. S. 113; *Budd* v. *New York*, 143 U. S. 517; *Brass* v. *Stoeser*, 153 U. S. 391. Every case so far involving any inquiry as to the reasonableness of statutory rates affected public corporations, such as railroad, turnpike and water companies, which perform functions of the state and enjoy valuable franchises, and whose right to exact toll is derived expressly or impliedly from legislative grant. *Reagan* v. *Farmers' Loan & Trust Co.*, 154 U. S. 362; *Covington, &c., Turnpike Co.* v. *Sandford*, 164 U. S. 578; *Smyth* v. *Ames* 169 U. S. 466; *San Diego Land Company* v. *National City*, 174 U. S. 739.

It is submitted by the appellants that there is a broad difference in this matter of regulation between the public or quasi public use of highways, waters, &c., and the use of private property by the public for its convenience and profit. The distinction is between what is essentially a public use and a use which is essentially private but in which the public has an interest for its convenience or profit. In the former case, the government may control because the use is primarily an instrumentality of the state, within the function of the government itself to establish, perform and maintain. In the latter case, the use is primarily private, although the

public has acquired an interest and has a right of interference, but only to the extent of its necessity or welfare.

In the case of private property so used by the public, a court of justice may fairly and justly recognize equities in favor of the owner which do not exist in the case of enterprises more or less public. The owner of such private property should be permitted to enjoy in fullest measure the legitimate fruits of his successful venture and labor, as long always as the charges he makes are customary and reasonable. So also the power of the legislature to interfere with private property ought not to be so extensive as in the case of property essentially public; nor ought the courts to indulge, as against the owner of private property, the same degree of presumption in upholding legislative interference as may rightly obtain when the rates of railroad, turnpike and other public corporations are being dealt with. This is a doctrine which should commend itself to the court as embodying a sound public policy and a just regard for the sacred rights of property. The appellants, therefore, urge that they are entitled to more consideration and to a larger measure of liberty of action and freedom of contract and also to a larger profit than they might be entitled to if their capital were invested in essentially public instrumentalities.

The power of a legislature to regulate or prescribe the tolls or charges of corporations performing public functions really finds its origin and sanction in the legislative grant itself. Without a statutory grant express or implied, no public corporation, such as a railroad, a turnpike, or a water company, could exact toll for the use of the public highway or the public waters. Such a toll is in

effect a common charge on the public. Its imposition and regulation are prerogatives of the government alone. These public corporations are created and their franchises granted primarily for the benefit of the public; they become and serve as instrumentalities of the state for the welfare of its people and the development of its resources; and they are essentially subject to the governmental power and duty of control, supervision and regulation. This control is fair and just, as well to the public as to the property owner; the charter grant always implies, if it does not recite, that the legislature has reserved the right to prescribe reasonable tolls and charges for the use of the public highways, public waters, &c., and this reservation is a part of the contract.

The cases which discuss the power of regulating the tolls and charges of railroad, turnpike and water companies emphasize the fact that the companies are performing public functions; that the right to exact tolls comes from the state; that there is an implied condition or reservation in the grant that the tolls shall be subject to legislative regulation, and, *e. g.*, that "it is as vital that the State should retain its control of tolls upon public highways as it is that it should not surrender or fetter its power of taxation." *Covington, &c., Turnpike Co.* v. *Sandford*, 164 U. S. 578, 587, 594. See, also, *Reagan* v. *Farmers' Loan & Trust Co.*, 154 U. S. 362, 393; *Smyth* v. *Ames*, 169 U. S. 466, 544; *Olcott* v. *Banfill*, 4 N. H. 537, 545; *Boston and Lowell Railroad Corporation* v. *Salem and Lowell Railroad Co.*, 2 Gray 1, 29; *Camden and Amboy R. R. Co.* v. *Briggs*, 22 N. J. Law 623, 657; *Erie & North-East Railroad Company* v. *Casey*, 26 Pa. St. 287, 307. Even then the true scope of the power is "to prevent extortion or undue charges." *Lake Shore, &c. Railway*

Co. v. *Smith*, 173 U. S. 684, 699. It follows that, in the case of these public corporations, which possess the great power of eminent domain and perform functions that the state itself might perform, the governmental authority to regulate tolls rests upon the implied condition or reservation to which we have adverted. When the legislature does exercise this reserved power, the courts may well hold that only in the case of clearest abuse ought the judicial branch to interfere, because such reservation is part of the contract of incorporation and part of the consideration upon which valuable franchises and privileges have been granted and accepted.

But no such consideration exists in the case of individuals and private corporations which exercise no power of eminent domain and perform no public functions. The authority of the legislature to regulate their charges does not spring from any grant or implied condition or contract, but is derived solely from and is to be upheld only by what is termed the police power. The underlying principle supporting the exercise of this police power is that it is the duty of the state to protect the public from extortion by those whose property is so situated or whose business has become so important that the public is to a greater or less extent constrained to deal with them. The conduct of the business becomes a matter of public concern and interest to the extent, and only to the extent, that the legislature may interfere to prevent the exaction of unreasonable and arbitrary charges. Then, as in the case of a railroad company, "the government within whose limits it conducts its business, may by legislation protect the people against unreasonable charges for the services rendered by it." [1] In other words,

[1] Mr. Justice Harlan in *Smyth* v. *Ames*, 169 U. S. 466, 545.

the scope and limit of the power is to prevent extortion; and so long as the charges of the owner of such private property are not undue or extortionate, the legislature cannot interfere.

The doctrine of *Munn* v. *Illinois*, 94 U. S. 113, ought not to be so extended as to place private businesses and property in exactly the same category as railroads or other public instrumentalities, for the ground and scope of the authority to interfere and regulate are not at all the same in both cases. The court below undoubtedly conceived that the rule in this case was stricter than it should be, and held in effect that, though the statutory rates might seem unreasonable according to the ordinary tests of reasonableness, yet, unless they were *confiscatory*, relief should be denied. Thus, in dismissing the bills of complaint, Thayer, C. J. said (82 Fed. Rep. at p. 856; record, p. 945):

> "Conceding, as we must, that the legislation complained of was radical in its nature and effect, that it reduced the company's income about fifty per cent., *and that it prevents it from realizing on the capital invested in its plant such a per cent. as is ordinarily realized on capital invested in other mercantile and business enterprises*, still the court is not prepared to hold that the statute is *confiscatory*, and that it deprives the company of its property without due process of law."

It cannot be doubted that, if the court below had appreciated that the true rule is not so stringent as to deny the citizen relief unless the legislation is confiscation, and that upon this question of reasonableness a court should "apply justice as it is understood of men, and, in its clear light,"[1] determine the controversy, the result would have been different. The decision would have been that the customary rates charged by the stock-yards company were, according to all ordinary rules of justice, reasonable and just.

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[1] McKenna, C. J. in *Southern Pac. Co.* v. *Board of Railroad Com'rs*, 78 Fed. Rep. 236, 261

The Kansas City Stock-Yards Company has no special franchise, no privilege, no monopoly of any kind. It is engaged in an intensely competitive business. Even in Kansas City, competitive yards may be started alongside at any time. It has no practical monopoly from its situation. This fact was virtually conceded, for the contention of the Attorney-General below, throughout the taking of the testimony, seemed to be that other and cheaper lands were available for stock-yards purposes. The establishment of other stock-yards in the vicinity might ruin the business. The removal of the packing plants adjoining its premises would at once destroy the market and deprive it of half its custom. The stock-yards company exercises no power of eminent domain; and must pay for the property it uses whatever price the private owner exacts. The proof shows that it was compelled to pay more for much of its property than if it had been able to exercise the power to condemn. To use the expression of some of the witnesses, the absence of the power of eminent domain enabled property owners, in certain instances, to "hold up" the company in the purchase of necessary land (pp. 206, 234, 308, 494, 551), and in fact compelled it to pay much more than the master allowed in many instances as the value of the property.[1] Its stockholders hazarded their capital upon a doubtful and uncertain industrial

[1] Indeed, this feature, which in all fairness should have created an equity in favor of the stock-yards company, and should have emphasized the reason why it ought not to be subject to legislative control to the same extent as a corporation exercising the great power and advantage of eminent domain, and should be allowed more than the bare market value of the lands, was turned against it and pressed as a reason why the price paid by it should not be considered. Thus, lands that actually cost over $60,000 an acre were reported by the master as worth only $45,000, and 22.858 acres which were purchased in 1895 at an actual cost of $1,289,239.73, or an average of $56,401.72 per acre, were likewise reported as worth only $45,000 per acre, although it appeared that the stock-yards company was even then unsuccessfully endeavoring to purchase adjoining property at $70,000 an acre.

speculation (pp. 354, 442, 458, 459). They have succeeded solely through the energy and capacity of the managers and the investment and risk of a large capital. The venture has turned out very successful; the owners of the stock-yards have built up a business and market which are now more than thirty times what they were in 1871; and their efforts have resulted in creating a valuable and remunerative business (pp. 347, 451), profitable indeed to the owners of the stock-yards, but immeasurably beneficial to the State of Kansas and to Kansas City. They have created a great market where previously there was nothing but a feeding yard. The real property, which was mostly bought in 1871 to 1879, and was then wild land, has vastly increased in value during the period of from twenty to twenty-seven years; and the owners are entitled to the full benefit of that increase. It is equitable that such a concern, whether owned by an individual or a private corporation, shall be allowed to reap the fair profit of the industry and sagacity of its managers and the risk of its capital. It would be just for a court in such a case to recognize equities which might not obtain with a railroad or turnpike or water company's property. It would be a sound and wise rule to declare that such a private owner shall be less subject to legislative interference and regulation than the public corporation above described, which enjoys valuable franchises and privileges at the expense of the public and to the detriment of the liberty of others. Will not a court of equity, in determining value, allow to such an owner something more than the bare value of the naked land and of the materials used in the structures? Would not the basis of actual cost of present reproduction be obviously an unfair valuation as between man and man? Does it

become a justifiable basis of valuation, with its clear element of spoliation and destruction of values, merely because the legislature sees fit to interfere for the benefit of the class using the market?

The court is also called upon in the case at bar to decide for the first time whether the doctrine of *Munn* v. *Illinois* shall be extended so that a legislature may, in the case of any business impressed with a public interest, regulate the charges of large dealers, and leave small dealers in exactly the same business free from regulation. In *Munn* v. *Illinois*, *Budd* v. *New York* and *Brass* v. *Stoeser*, the regulation applied to all alike in the same locality, whether owners of large or small warehouses or elevators, and there was absolutely no discrimination because of the extent of the business done or the amount of the property owned. In the case at bar, all small yards are not affected. The testimony shows that there is at least one other stock-yards in Kansas, namely, at Wichita, and for all that appears, there are numerous feeding stations and cattle stables all over the state. The legislature, of course, had some purpose and some object in wording its enactment so as to exempt and free from its operation all small yards. The Attorney-General now contends that, for all that appears, the Kansas City stock-yards is the only stock-yards in the state. If that had been the fact, the legislature would never have worded its enactment in the peculiar way it did, and the Attorney-General would have shown the fact. But it is not the fact. On its face, this act exempts small yards and dealers in feed. And it is submitted that "it is a pure, bald and unmixed power of discrimination in favor of"[1] those persons who are engaged in a similar

[1] *Lake Shore, &c., Railway Co.* v. *Smith*, 173 U. S. 684, 698.

business of yarding and feeding cattle to a smaller extent than at the Kansas City yards.

If a business becomes impressed with a public interest, and it be found that the common law requirement of reasonable charges is insufficient to protect the public and legislation is necessary, then the only safe rule, in case the legislature does interfere to regulate, is that the regulation shall be by general law, applicable to all alike—owners of large or small business plants, rich or poor.

Although this is the first case presenting the question as to the elements to be considered in determining the reasonableness of charges in the case of private concerns, nevertheless the labor and study of the court in previous cases have resulted in the elucidation of a fundamental principle of justice which will guide to the truth in all these discussions. The appellants invoke the protection of that principle. The principle is that the owner of property is entitled to reasonable compensation for the service rendered to the public and to a just return upon the fair present value of the property used by the public, and that the legislature in fixing or regulating charges must do so with reference to what is just and reasonable under all the circumstances—just to the property owner as well as to the public. In applying this principle, the basis of calculation in most cases will be either the value in itself of the service rendered or the fair present value of the property used for the convenience of the public, or both together, and frequently such other equities will be considered as may justly and rightly be given weight in each case. Therefore, if there are equities in respect of industrial enterprises which do not exist in respect of, *e. g.*, railroads, the court will give

the property owner the benefit of those equities. It is also now established that, if less than a reasonable rate be prescribed by a legislature, the constitutional rights of the property owner are illegally encroached upon; and that, if he challenges the justice or reasonableness of the attempted regulation, he is entitled, as matter of unqualified constitutional right, "to a judicial investigation, by due process of law, under the forms and with the machinery provided by the wisdom of successive ages for the investigation judicially of the truth of a matter in controversy."[1] In the light of these principles, we may proceed to the consideration of the particular features presented in the present controversy.

III.

The effect of the statute on the gross and net earnings of the stock-yards company.

The first inquiry that logically presents itself is as to the effect of the legislation upon the company's net earnings under the customary charges. If it be established that the reduction is radical, the next inquiry must be as to whether or not such a reduction from the customary charges is fair, just and reasonable. The customary rates before the legislation in question were 25 cents per head of cattle, 10 cents for calves, 8 cents for hogs, and 5 cents for sheep (p. 64). The statute reduced these charges to 15 cents for cattle, 8 cents for calves, 6 cents for hogs and 4 cents for sheep, that is to say, from twenty to forty per cent.

As will be shown hereafter in the discussion of the reasonableness of the customary charge and the value of the service rendered, the Kansas City Stock-Yards Company has for many years made the same charge for yard-

[1] Mr. Justice Blatchford in *Chicago &c., Railway Co.* v. *Minnesota*, 134 U. S. 418, 457.

age, weighing, feeding and other services as has been usual in all other stock-yards; and between the yards at Kansas City and those at other points "there is and was for a long time prior to March 12, 1897, active and growing competition among their owners to attract and secure to each the shipment of live stock from competitive territories" (record, p. 74). The master found that the customary charges collected for many years at the Kansas City stock-yards are identical with those at other stock-yards, and that the customary charges for feeding, &c., were either identical with or less than those of other yards (pp. 64, 65).

The year 1896 was taken by consent as a fair basis upon which to test the operation of the statutory schedule. During that year, the gross receipts for yardage at the customary rates were $665,658.05, and for feed, &c., $224,690.88, so that the total gross receipts for the services regulated by the act of March 3, 1897, amounted in 1896 to $890,348.93 (p. 72). If, however, the statutory rates had prevailed instead of the customary charges, the gross receipts for yardage, etc., would have been $441,180.48; and for feed, &c., $148,516.68, so that the total gross receipts would have been $589,697.16, a reduction of $300,651.77, or more than one-third (pp. 72, 73). That this is the extent of the reduction is conceded.[1] The effect on the net income would have been even more radical. The net earnings in 1896 applicable to dividends were at the customary rates, $476,974.08. The net earnings under the statutory rates would have been $176,322.31, a reduction of $300,651.77 (p. 73), or sixty-three per cent.

[1] The Attorney-General states in his brief (p. 54): "The master found, and it is conceded that the application of the Kansas statute to the business of 1896 would have reduced the gross income $300,651.77."

As Mr. Justice Harlan said, quoting from the opinion of the Circuit Court, in *Smyth* v. *Ames*, 169 U. S. 466, 542:

> "It must be remembered that these roads are competing roads; that competition tends to a reduction of rates – sometimes, as the history of the country has shown, below that which affords any remuneration to those who own the property. Can it be possible that any business so carried on can suffer a reduction of 29½ per cent. in its receipts without ruin? What would any business man, engaged in any business of a private character, think of a compulsory reduction of his receipts to the amount of 29½ per cent.?"

The Attorney-General of Kansas, however, contends that certain items, amounting in the net aggregate to $169,584.65, and representing expenditures for betterments, improvements and extensions, should not have been paid out of profits, but should have been capitalized and new stock issued therefor. These improvements, betterments and extensions were mostly in renewal of existing facilities in the old yards (pp. 338, 340), or were made in order to better accommodate the business of the yards, and they did not tend to increase the income or earning capacity of the company (p. 317).

A full description of these improvements and betterments will be found in a stipulation which the parties entered into "for the purpose of removing any question which may exist in regard to the manner in which the earnings of the stock-yards company were disbursed during the years 1892, 1893, 1894, 1895 and 1896 for operations, maintenance, and extension of improvements" (p. 82). The items of 1896 consisted of actual cash expenditures for rebuilding or replacing parts of the existing plant, completing buildings, laying brick pavement instead of plank flooring which had worn out, etc. (pp. 89–91). There has heretofore been no suggestion that this construction was not absolutely necessary, or was not paid out of earnings. But,

because most of the items were betterments or extensions of improvements of the existing plant, costing as to the principal items—*e.g.*, the brick pavement instead of wood—much more than the old wooden pavement replaced, it was insisted that such increased expenditure added to the value of the plant and must be capitalized, although conservative business management would clearly provide for such necessary improvements or renewals out of income.

It is true that the company, prior to 1896, had capitalized most of its extensions or improvements. The contention below was, therefore, that, as the company had capitalized extensions or improvements in the past, it must continue to do so in the future. Under this theory, the company must keep on year after year increasing its capital stock for whatever improvements or extensions the necessities of the business might require, whether or not this construction added to earning capacity. If not willing, *or if unable by the sale of stock or bonds*, to capitalize improvements necessary in order to retain the business and market at Kansas City, the company must cease improving its facilities, and progress must stop. It will at once occur to the court that if any such company could as between itself and the public indefinitely capitalize improvements or betterments and not provide for them out of earnings, it would, in the course of time, inevitably become grossly over-capitalized. It will also occur to every fair mind that in such a case we should find the State of Kansas insisting that betterments and improvements which it was known would not increase the earning capacity ought not to have been capitalized and the additional burden imposed on the public. It would be insisted that the stockholders must either pay for

these improvements out of income, or put their hands in their pockets; but that the public could not be compelled to go on indefinitely paying increased charges in order to furnish returns upon such expenditures.

The reasons why the managers of the company did not feel justified or warranted in capitalizing these improvements were explained in the testimony. Thus, it was shown that the expenditures were of the usual character (pp. 198, 199, 235, 236)—that is to say, every year some different part required renewal or improvement or extension; that the improvements did not constitute any extension of the present system itself (p. 317); that the present facilities were simply renewed or reconstructed (p. 340); that the larger part of the expenditure was upon the old yards and constituted renewals (p. 338); that depreciation even with constant repairs will be fully ten to twelve per cent. per annum (pp. 236, 237), and that the renewals are growing larger year by year (pp. 198, 199). Indeed, it was shown that the plant, which as it now stands has actually cost $1,593,038.07 (p. 350), does not in many portions last more than from three to five years (pp. 121, 443, 590, 591); that it has been twice entirely rebuilt since 1887 (p. 213), and that it was practically all rebuilt within the last seven or eight years (p. 238). *This evidence is not contradicted or impeached in any degree.* The accounts as prepared and kept by the stockyards company do not show a dollar of allowance for depreciation in 1896. Undoubtedly this was because the managers considered that the improvements offset the depreciation. If we take only ten per cent. for depreciation, the minimum testified to, the company would have to set apart *in addition to repairs* over $159,000 every year. The court will note that no allowance whatever was

made by the master or by the court below on final hearing for depreciation, except in the valuation of the structures. Nor was any entry made in the profit and loss account. The reason is apparent. The actual improvements adding to the permanent value were $169,584.65, which was about equal to the *minimum* of depreciation.[1]

In assigning the reasons for dismissing the bill of complaint, Thayer, C. J., does not discuss the point of depreciation, although Foster, D. J., did so in denying the motion for an injunction. The latter adverted to the fact that the master had made no report on the subject, and then proceeded to estimate a depreciation of only $75,400, based upon the assumption that, as to some of the improvements, two per cent. would represent the depreciation, which is without support of competent evidence in the record (record, pp. 871, 872; 82 Fed. Rep. 849) and utterly conflicting with common sense.

Now, it must go without saying that a court of equity will recognize that in the operation of a plant such as the stock-yards, and notwithstanding repairs, there is a constant wearing out of the lumber, &c., from natural causes and use, and a constant necessity for replacing old with new, and that in estimating the profits of operation an allowance must be made for depreciation. This view as to depreciation and that improvements may be properly charged against income is fully supported by the authorities. *Reagan* v. *Farmers Loan & Trust Co.*, 154 U. S. 362, 407; *San Diego Land & Town Co.* v. *City of National City*, 79 Fed. Rep. 83, 87; 174 U. S. 739, 757; *Little Miami, &c., R. R. Co.* v. *United States*, 108 U. S.

[1] It must seem unfair that the master should, in reporting the present value, deduct for depreciation, but allow absolutely nothing for depreciation when reporting the net earnings applicable to dividends.

277, 278; *Union Pacific R. R. Co.* v. *United States*, 99 U. S. 402, 420; *United States* v. *Central Pacific Railroad Co.*, 138 U. S. 84, 86; *Southern Pacific Co.* v. *Board of Railroad Commissioners*, 78 Fed. Rep. 236, 266; *Metropolitan Trust Co.* v. *Houston & T. C. R. Co.*, 90 Fed. Rep. 683, 690; *Whittaker* v. *Amwell National Bank*, 52 N. J. Eq. 400, 404; *Glasier* v. *Rolls*, L. R. 42 Ch. Div. 436, 453; *Dent* v. *London Tramways Co.*, L. R. 16 Ch. Div. 344, 353; *Davison* v. *Gillies*, L. R. 16 Ch. Div. 347; *Regina* v. *Grand Junction Ry. Co.*, 4 Ad. & E., N. S. 18, 41; *Regina* v. *London, Brighton, &c., Ry.*, 15 Ad. & E., N. S. 313, 363; *Regina* v. *Great Western Ry.*, 15 Ad. & E., N. S. 1085, 1088; *Corry* v. *Londonderry, &c., Railway Co.*, 29 Beavan, 263, 273.

If, according to the contention of the Attorney-General, improvements must be capitalized year after year irrespective of the effect upon earnings, then it is submitted that there must, in common fairness, be an allowance for depreciation of at least ten per cent. of the *cost* of the present plant, which was shown to be $1,593,038.07 (p. 350). Therefore, whether we deduct improvements from income and write off nothing for depreciation, or capitalize improvements and deduct a fair amount for depreciation, it will follow that about the sum in question ought to have been deducted from the gross earnings of the property in 1896 before the actual net earnings could have been justly and truly determined.

But, so the argument seemed to run below, the company capitalized in the past whenever it added extensions or improvements, and it cannot stop now; it must continue year after year the practice of issuing new stock and increasing its capital even though this course would ordinarily be imprudent or improper. This should hardly

be a fair argument for the Attorney-General to make. The true interests of the people of Kansas are that the capitalization of such a company, upon which capitalization some return must be earned, shall be kept as low and upon as conservative a basis as practicable. With what patience would a court listen to an argument that a manufacturing corporation, whose earnings had reached their probable maximum, should capitalize every betterment and improvement, and issue bonds or stock for new machinery or fixtures; or even to an argument that a railroad company, which is a far more permanent business, must capitalize year after year all expenditures for increased weight of rails, for improvement of existing road-bed, for station houses rebuilt in brick or stone to replace wooden structures, etc., etc., notwithstanding the fact that the managers believed that there was a constant depreciation from wear and tear equivalent to these improvements and that the company had reached its maximum earning capacity?

The officers truthfully stated why they could not properly or honestly continue to capitalize improvements and sell stock to the public to provide the necessary funds. In addition to the facts above discussed, they showed that the plant in 1896 had been completed (p. 237); that the construction account was closed (p. 238); that even in the past only a part of such expenditures were capitalized (p. 344); that the authorized capital stock of the company was $7,500,000 (p. 237), of which only $131,350 remained unissued (p. 238); that this unissued stock had been reserved to buy additional necessary real estate (*id.*); that the business of the company had in their judgment reached its maximum (pp. 187, 238, 239, 325, 326, 339); and that there was then no

anticipation of increase of business (p. 240).[1] In other words, they considered that the receipts of live stock had reached the maximum number to be marketed in territory tributary to this market (p. 385), and that, consequently, the earnings would probably not increase. Can it be doubted that, under such circumstances, the stock-yards company would not have been justified in selling new stock which could not of itself earn a dividend, or in selling new bonds upon which they would not earn the interest, and that this court will sanction and approve the making of these necessary improvements out of earnings if only about equal to a fair provision to cover inevitable depreciation?

In order to demonstrate the truth of this assertion that the business of the company had probably reached its maximum, the attention of the court is earnestly called to the figures shown in the testimony and exhibits on file. Thus, the business of the yards, as evidenced by the number of live stock handled, increased from 167,199 head in 1871 to 2,522,239 head in 1884, or over 1,500 per cent., and from 2,522,239 head in 1884 to 4,986,955 head in 1890, or about 100 per cent.; but between 1890 and 1896 the receipts increased to 5,471,246, or less than 10 per cent., of which increase nearly all was made in 1896 over 1895. The receipts of hogs since 1890 have never equaled those of that year (p. 385). As shown in the testimony of Mr. Morse, the general manager of the stock-yards company (p. 239), the receipts of cattle, which in

[1] Mr. Morse, the general manager of the company, explained the situation at page 239: "It is my judgment and the judgment of those who have looked most carefully into the matter that we are very near the maximum point on our business at this time." In testifying again on this point at page 339, he said: "Another reason [*i. e.*, why the improvements of 1896 were not capitalized] was that we regarded the business as approaching a maximum now; it has not varied materially from year to year."

1893 were 1,071,776 head, were only 863,430 in 1896, *a loss of 208,346 head;* the receipts of calves, which in 1893 were 57,000 head, were only 33,000 head in 1896, *a loss of 24,000 head;* the receipts of hogs, which in 1890 were 2,051,589 head, were only 1,625,848 in 1896, *a loss of 425,741 head;* and the receipts of sheep, which in 1893 were 295,000, were 294,000 in 1896. Although there was an increase in the total number of head in 1896, the average receipts of the seven years of 1890–1896 were less than the receipts of 1890. Surely, it is no pretense to say that these figures admonished the managers of the company that it was time to cease issuing new stock for improvements; and it is fair to assume that any court of equity, far from condemning, will applaud this conservative and honest policy. A man may well be justified in capitalizing improvements while his business increases; but, after the maximum had been reached, it would obviously be improper if not dishonest to sell new stock for improvements and make no provision for depreciation.

These facts and figures ought to establish beyond cavil the propriety and truth of the position taken by the managers of the stock-yards company in respect of the necessary improvements and betterments made in 1896, namely, that they could not consistently issue and sell new stock or bonds to provide the funds, and that they could properly charge the improvements against earnings, because they fairly equalled the depreciation.

A different view would lead to results which sound policy ought to forbid. The court will not declare that, under the circumstances disclosed by this record, the stock-yards company must necessarily go on indefinitely capitalizing such expenditures. It would be difficult to

imagine a more objectionable and dangerous system of corporate financing in the case of a company in which the public has an interest to prevent excessive capitalization.

Expressions in some of the reported decisions may be found to the effect that improvements and betterments in the case of railroads should be provided for out of capital stock or bonds. A careful examination will disclose that none of them presented facts similar to those now before the court. Some of these cases turned upon peculiar provisions securing the rights of income bondholders or preferred stockholders, or the claims of the government as in the Pacific Railroad cases. But in every one of the rate cases where this point has been presented, the courts have uniformly ruled not only that allowance for depreciation was proper, but also that betterments and improvements could fairly and equitably be charged against income.

The fact that the improvements in question were charged to a construction account or were called permanent improvements is immaterial. The controlling element is that the expenditures were necessary in order to keep the stock-yards in serviceable condition, and this fact is undisputed. Certainly the mere title under which these expenditures are once stated is not sufficient to overthrow the facts so fully and clearly shown: that the improvements were necessary; that they were about what will be required yearly; that they only equal the annual depreciation of the plant; that they do not increase the earnings, and that the business in all probability has reached its maximum. As Mr. Justice Brewer said in *Reagan* v. *Farmers' Loan & Trust Co.*, 154 U. S. 362, 407:

> "Those are facts whose significance cannot be destroyed by any mere manner of bookkeeping or classification of expenditures."

There remains to be noticed a mistake in the brief of the Attorney-General. The statement is made that these improvements were actually capitalized and stock issued to the stockholders to represent the expenditure (brief, pp. 50–52, 68). The record shows the contrary (pp. 237, 238, 339, 345).

Referring to this item of $169,584.65 the answer of Attorney-General Boyle states the fact as follows (p. 885):

> "And the reasons for a failure to capitalize said improvements for 1896 were that there was a surplus in the treasury at Kansas City in excess of said amount, besides the large surplus in the Boston financial office, and the amount of stock that might be issued without amendment to the charter or filing a new charter was less than said sum, and it was intended to use the remaining stock for the purchase of certain lands north of the north yards."

When we reflect that this statement was sworn to and filed after all the testimony had been taken and after the application for an injunction had been denied by Foster, D. J. (pp. 867, 874), the answer must be taken as most persuasively, if not conclusively, supporting the position that stock was not issued for the improvements made in 1896. The Attorney-General ought not to be permitted now to change front and mend his hold by the claim that the improvements were capitalized.[1]

But, the evidence shows that no part of the outstanding stock, amounting at par to $7,368,653, was issued after June 25, 1896 (pp. 287, 291). The express finding of the master and court below and the uncontradicted testimony

[1] *Railway Co.* v. *McCarthy*, 96 U. S. 258, 267.

is that the extensions of improvements made in 1896 *were not capitalized* (pp. 62, 71, 237, 238, 287, 345.) There can be no misunderstanding upon this point in view of the explicit proof in the record.[1]

It is, therefore, submitted that the improvements made in 1896 and amounting to $169,584.65, equalling as they do the annual depreciation of the plant, should, in justice to the stock-yards company, be paid out of the earnings and treated as a fit and proper deduction from the income, before calculating or attempting to determine the net profits which the property earned in 1896. If this be true, then it necessarily follows that the result of the statutory schedule is to reduce the net earnings from $476,974.08 to $176,322.31, a reduction of over sixty-three per cent. In view of this radical effect upon the income of the stock-yards company, it is not surprising that both the judges below should have confessed that they thought the reduction "radical" and that the issues were balanced with doubt. And had they not misconceived the rule of law, the judgment would have been in favor of the right of the stock-yards company to continue to conduct its business as heretofore and to collect the customary charges. The reasonableness of those customary charges will be discussed under point V. of this brief (p. 59).

[1] Mr. Morse testified at page 237 (and the expert who examined the books on behalf of the Attorney-General practically confirmed this, pp. 740, 741): "Q. State if any of the expenditures made from the gross earnings in 1896, other than ordinary operating expenses, have been capitalized—that is to say, represented by an issue of capital stock. A. No, sir; there has not. Q. Any of the operating expenses been capitalized, Colonel Morse? A. No, sir; they have not." And at page 345: "Q. You were asked something about the capitalization of earnings that were expended for construction or cost of maintenance in certain years. Were they capitalized in 1896? A. No, sir; they were not. Q. Can they ever be capitalized in the future? A. No, sir."

IV.

The fair present value of the stock-yards property and of its capital stock.

The Attorney-General of Kansas now candidly concedes that neither the cost of the property nor the amount of the original investment is controlling as a basis of valuation; that the property has greatly increased in value, and that the stock-yards company should be permitted to earn a reasonable interest upon the present value of its property. As stated on pages 76-77 of his brief:

> "We do not ask that the Kansas City Stock-Yards Company be permitted to earn only a reasonable percentage of profit upon the money which has been actually invested in its business or upon the actual cost of its property. *We recognize the fact that this property has greatly increased in value since the organization of the stock-yards, and we are willing that the company be permitted to earn a reasonable interest upon the value of its property.*"

This broad-minded and frank concession, embodying as it does the true and just rule of law, has greatly simplified and narrowed the discussion. On the record, then, only two points remain to be discussed, namely: (1) what is the true and fair value of the property as shown by the record; and (2) what is a reasonable interest upon money invested in an uncertain industrial enterprise of this nature. It is important to call attention to the fact that the Attorney-General does not attempt, in any aspect of his discussion, to contend that reasonable interest in Kansas would not equal at least six per cent., nor to challenge the correctness of the following statement of Thayer, C. J., below (record, p. 945; 82 Fed. Rep. 856):

> "Conceding, as we must, that the legislation complained of was radical in its nature and effect, that it reduced the company's income about fifty per cent., *and that it prevents it from realizing on the capital invested in its plant such a per cent. as is ordinarily realized on capital invested in other mercantile and business enterprises*, &c."

In view of the mass of testimony contained in the transcript of this record, every effort will be made to save the labor of the court by reference to facts as to which there is no conflict; and so far as may be practicable, the appellants will adopt in this reply the figures of the Attorney-General and of the master, even though these figures are to some extent inaccurate. A fair approximation of what the record shows and a general but accurate statement of the material facts or points will be of more aid to the court than any elaborate analysis and weighing of the proof or any extended mathematical calculations.

1.

As to what is reasonable interest or compensation on such an investment.

The Attorney-General says that "we are willing that the company be permitted to earn a reasonable interest upon the value of its property" (defendant's brief, p. 77). The rate he would deem a reasonable interest is not stated, but presumably it would be at least six per cent., because he strives to show that the statutory rates afford a much greater return.

The appellants do not contend that owners of stockyards are entitled as matter of fixed right to earn at least six per cent. upon the value of their property and capital invested in the business irrespective of the reasonableness of the charge made to the public. But they do urge that in all fairness and justice they are entitled to receive the fair value of money in the State of Kansas so long as the charges are customary and in themselves reasonable for the service rendered. They simply ask the fair value of money so invested in industrial enterprises "as it stood in the markets of the world, and not as prescribed by an act of the legislature."

The business and the receipts at the yards have been built up by the industry and energy of the managers and owners of the stock-yards and by the risk of their capital. The stock-yards would never have been established nor a dollar invested in such an uncertain and speculative venture (pp. 442, 458) if the owners had conceived it possible that, as soon as they had built up a large trade and successful business, the legislature would step in and limit their profits below the rate at which they could lend money without practical risk. Indeed, if the owners of the stock-yards were tomorrow seeking to purchase land and establish new yards and to borrow money for that purpose in Kansas, they would have to pay at least six per cent., and probably as high as from eight to ten per cent., for the use of the money. In that event, their earnings under the statutory rates would clearly be less than their fixed charges. The question cannot be changed in its substance because this company has been so well and conservatively managed that it has not a dollar of bonded debt, and has secured all the money it needed either by cash contributions of the stockholders or by the investment in the enterprise of profits as they accrued from time to time in the past.

The statutes of Kansas provide that the rate of interest for the use of money shall be six per cent. in the absence of an agreement fixing a different rate, and that the maximum shall be ten per cent. This provision is the expression of the thought and estimate of the state itself as to the value of money and as to what justice requires for the use of it. *Reagan* v. *Farmers' Loan & Trust Co.*, 154 U. S. 362, 411. It is the legal measure of the value of the use, not only of money, but of property generally, and is a fair and just basis in almost all cases.

Loudon v. *Taxing District*, 104 U. S. 771, 774; *Spalding* v. *Mason*, 161 U. S. 375, 396. In Kansas all loans upon the security of real or personal property earn from six to ten per cent. when there is practically no risk for the lender. The rate of six per cent. is seldom accepted, and the maximum is frequently stipulated for, particularly in industrial ventures. The most conservative investments in the state, such as municipal bonds, bear from seven to ten per cent. interest as shown in the principal brief filed on behalf of the appellants. It is, of course, a matter of common knowledge that the reasonable expectation of profit in industrial ventures is always more than what a man can secure by lending his money on security, for the obvious reason that the risk is greater. The court below frankly conceded that the rates prescribed by the legislature in this case prevent the stock-yards company "from realizing on the capital invested in its plant such a per cent. as is ordinarily realized on capital invested in other mercantile and business enterprises." Will it not be a gross injustice under such circumstances for a court of equity to adjudge that the stock-yards company is not entitled to reap the legitimate reward of a successful industrial venture? Will it not be held to be substantial justice—just both to the public and to the owner of the stock-yards—that such owner shall be entitled to earn at least the minimum allowed by the state statute when money is loaned upon security? If this be so, the court will hold that, as the legislative rates afford, in no reasonable aspect of the proof contained in the record, anything like six per cent., the statute violates the property rights of the owners of these stock-yards.

As Mr. Justice Brewer said in *Reagan* v. *Farmers' Loan & Trust Co.*, 154 U. S. 362, 410:

"The equal protection of the laws—the spirit of common justice—forbids that one class should by law be compelled to suffer loss that others may make gain. If the State were to seek to acquire the title to these roads, under its power of eminent domain, is there any doubt that constitutional provisions would require the payment to the corporation of just compensation, that compensation being the value of the property as it stood in the markets of the world, and not as prescribed by an act of the legislature? Is it any less a departure from the obligations of justice to seek to take not the title but the use for the public benefit at less than its market value?"

2.

As to the present value of the property used by the public for pecuniary profit.

The real dispute between the parties at the time the testimony was being taken, as clearly shown by the record, was as to the basis of valuation. The appellants contended that the property of the company should be valued in its present condition as a stock-yard, to which special purpose the company's lands, by reason of their location and surroundings, were especially adapted. The Attorney-General, on the other hand, contended that the valuation should be as if bare land, irrespective of its special adaptability and value, to which might be added the value of the improvements or mere cost of reproduction. Upon the question of the value of the land owned by the stock-yards company and devoted to stock-yards uses, the witnesses testifying as to values are to be divided into two distinct classes. In the first class are the witnesses called on behalf of the appellants, who either valued the property in its present condition, or valued the lands with particular regard to their special value for stock-yards purposes in view of their location and surroundings. In the second class are the witnesses called on behalf of the Attorney-General, who testified solely to the value of the property as bare or

naked land without regard to its value with improvements or for stock-yards or railroad purposes. *There was not a single witness called on behalf of the defendant who testified to the value of the land for stock-yards purposes; but, on the contrary, all except one had to admit that they did not calculate or include any such purposes in their estimate of the value* (pp. 619, 621, 632, 637, 645, 666, 683, 684, 696, 697), *and the testimony of the one witness who did not so state is of little value* (pp. 632, 637, 645). The portions of the record which establish the absolute accuracy of this statement are set forth in the principal brief filed on behalf of the appellants (pp. 74–77).

In order to avoid useless discussion upon the elements of valuation or mere definitions, we may consider the statement now made by the Attorney-General upon this question. He states as follows (defendant's brief, p. 27):

> "That the value of the real estate is to be determined by considering it as a body of naked land upon the general market, subject to purchase and sale for all purposes for which a demand may exist—for *stock-yards*, for railroads, for packing-houses, for manufacturing and mercantile purposes, with all the advantages which may accrue to it in consequence of its location near the corn belt as well as the cattle ranges of the country, in the heart of a great city, surrounded by all the railroads, packing-houses, manufacturing and mercantile plants there existing and in operation, and by reason of the limited area of land in the vicinity available for such purposes."

This being the basis now conceded by the present Attorney-General, we again assert that none of the witnesses called by his predecessor testified that they estimated the value of the property for stock-yards purposes or included the elements which the Attorney-General now concedes should have been properly considered in estimating the true value. Therefore, this statement practically concedes

that the estimates of none of the witnesses called on behalf of the Attorney-General are to be taken or relied upon.

The Attorney-General is hardly warranted in stating, in the brief filed in this court (p. 27), that the "capital stock issued and outstanding is admitted to be far in excess both of the amount of money actually invested in the concern and of the value of the tangible property." No such admission was ever made, and the facts and record do not support any such statement.

The cash investments of the owners of the stock-yards in this enterprise and the present values, according to the master's basis and the concession of the Attorney-General, may also be stated here in order to dispel some misconceptions as to what the facts really are, as shown by the record.

The present cash investments are:

1.	Cash investment for stock at par	$2,484,500 00
2.	Earnings invested in property and improvements instead of being distributed	2,369,173 00
3.	Conceded increase of value of land as reported by master	1,575,641 44
	Making a total investment of	$6,429,314 44

The present value, however, should be:

1.	Master's report of value of land now actually used for stock-yards purposes, divested of all improvements (p. 77)	$3,600,626 00
2.	Master's estimate of improvements, *after deducting over $113,000 from cost for depreciation* (p. 77) about	1,480,000 00
3.	Master's estimate of property not then used for stock-yards purposes, including working capital (p. 76)	1,200,000 00
4.	Master's report as to actual cost of locating packing industries (p. 61)	817,944 28
5.	Master's report as to supplies, &c., on hand (p. 77)	307,377 25
	Making a total of	$7,405,947 53

or $37,297.53 in excess of the $7,368,650 of capital stock issued and outstanding taken at par.

The actual cost of the bare or naked land used for stock-yards was $2,064,984.56 (p. 64); and the master, valuing it on an erroneous basis as bare or naked land, reported that the bare land had increased in value to $3,600,626, or an increase of $1,535,641.44 (p. 77). If he had allowed for the value of the property in its present condition, having regard to its peculiar adaptability to stock-yards purposes, it cannot be doubted that he would have reported that the value of the bare land had increased to at least $5,000,000, during the long period which the stock-yards company had held it. The appellants insist that even the bare land had increased in value much more than the master reported—at least double the increase of $1,535,641.44 allowed by him. It will be observed that while the master reported that the main yards in Kansas (40.659 acres) had increased from a cost of $230,110.81 (p. 64) to $1,219,770 (p. 77); yet he reported that the main yards in Missouri (41.708 acres) had increased only from the cost of $1,691,619.59 to $1,876,860 (pp. 64, 77).

Now, if the court be satisfied that this property has really increased in value more than this finding, it will allow the full measure of that increased value, for that is the legal right as well as the just equity of every property owner. This actual present value, even if the property had cost nothing, would clearly be the basis of valuation for every other purpose, including taxation and condemnation proceedings, and would be at once recognized by every fair-minded business man and every impartial court as the just value—just for the purpose of barter and sale, just for the purpose of taxation, just for the pur-

pose of condemnation to accommodate some superior public use.

In connection with the determination of the amount of increase in value, it will be pertinent to refer to a few well-known facts as to the remarkable growth of Kansas City. When the stock-yards were established, the land taken for that purpose was wild, covered with trees and surrounded by prairie or sand banks (p. 127), and there was no market (p. 185). It is now in the centre of the business portion of a great city; it is surrounded by a vast system of railroad tracks and terminals; and immediately and conveniently adjacent are situated immense packing and industrial concerns. Kansas City was but a small village when, in 1865, the Union Pacific Railroad Company reached it. At the time the census of 1870 was taken, there was no such town as Kansas City, Kansas, to which to assign any population or value. Indeed, in 1880 its population was only 3,200, which increased to 38,316 in 1890, to 41,150 in 1897, and to 45,000 in 1898, an increase of over 1,400 per cent. since the stock-yards were established. The assessed valuation of the real property in the whole county of Wyandotte, Kansas, which was $1,612,342 in 1870, had increased to $10,895,371 in 1890. The products of all the industries in Wyandotte county, which in 1870 amounted to $755,051, were $58,132,679 in 1890. The value of the meat packing product, which in 1870 was absolutely *nothing*, had in 1890 already reached $39,927,192. The number of head yarded in 1871 was 167,199, of the value of $4,210,605, and in 1896 the number of head yarded was 5,471,246 of the total value of $103,402,298. So also of Kansas City, Missouri. The population, which in 1870 was 32,260, had become

132,716 in 1890, and was 160,000 in 1897 and 175,000 in 1898. The assessed valuation of the real and personal estate in the whole of Jackson county, Missouri, which in 1870 was $16,103,332, had increased to $95,932,877 in 1890. The bank clearings of Kansas City which were only $20,407,967 in 1875, were $540,837,381 in 1897.

The evidence also shows marvelous increases in values of land. Conspicuous instances were cited of property worth $1,000 to $2,000 per front foot (p. 488), and one witness testified that land which he could have bought for $75 an acre twenty years ago was now worth $1,000 a front foot (p. 562), which would be the equivalent of $250,000 per acre, or an increase of over 3,000 times the cost.

In view of these enormous changes in conditions at Kansas City, it would, indeed, have been preposterous if the Attorney-General had ventured to urge upon this court that the land of the Kansas City Stock-Yards Company, more than one-third of which (forty acres) was purchased as far back as 1871, and fully three-quarters of which was purchased prior to 1880, had not greatly increased in value.

To repeat, the record clearly shows that all the witnesses testifying on behalf of the Attorney-General valued the land owned by the stock-yards company on the hypothesis that it was naked or bare land, divested of all improvements. The master valued on this basis (p. 77). None of these witnesses attempted in any manner to value the improvements, nor did any of them attempt to testify as to the value of the property in its then present condition, although some of these witnesses conceded that the property was in a most available situation and was especially adapted for stock-yard purposes by reason of its singular location amidst surrounding railroad systems and packing and other manufacturing plants. Yet none

of them estimated the fair and just value of the property for its most available and valuable purpose (pp. 619, 621, 632, 636, 637, 645, 683, 684, 696, 697).

The theory of the defendant below was that the property was to be valued upon the basis of naked or bare land dissociated from its present or past use, and this rule was followed by the master in arriving at the conclusions stated in his report and adopted by the court below. As the master states in his report, "the evidence on this subject was all adduced on the hypothesis that the land was divested of all improvements, but upon consideration of all adventitious advantages accruing to it from its location and environment, and upon this basis my estimates of the value of such real estate are made" (p. 77). There can be no question that this basis excluded all consideration of (1) the value of the land in its actual condition with its valuable improvements, and (2) the value of the land for its most available and especially adapted purpose, namely, stock-yards. That this special stock-yards value is an entirely proper element in any estimate is emphasized by the present argument of the Attorney-General (brief, p. 70) that there must of necessity be a large stock-yards at Kansas City, and that, "if the Kansas City stock-yards were to-day wiped out of existence another market-place would soon be found where all the business would be done, and as much business would center there as is now centered at these yards." Yet the uncontradicted testimony is that no other equally available site exists in Kansas City (pp. 527, 634), and consequently *this* site must have an especial value for what is absolutely necessary to Kansas City, namely, stock-yards, although the same number of acres might be obtained several miles away.

If the court shall hold that this property can, with any degree of fairness and justice to its owners, be valued on the basis of naked land, and without regard to its special value for stock-yards purposes, it may well be conceded that there is some evidence in the testimony of the defendant's witnesses tending to sustain the master's finding of $3,600,626 as the present value of the land, although the preponderance of qualified testimony showed a larger value; but if, on the contrary, the true and only just basis in such a case is (1) the value of the property as it stands with its improvements and (2) the value of the land itself with due regard to any particular use to which it is especially adapted, then the master's estimates and all the testimony on behalf of the defendant will of necessity be disregarded, and the court must determine from the testimony of the complainants' witnesses the true and just value.

It cannot be that, in a court of justice seeking to adjudge what is fair and just as between the owner and the public, every element of value which would govern any conservative business man is to be discarded, and the mere cost of reproduction is to control. There can be no question as to the special availability of this property for stock-yard purposes, surrounded as it is by railroads and packing houses. That it is so available is now practically conceded; and that fact necessarily increases its value. For that purpose, it is worth more than for any other purpose. Surely, it cannot be that its value for the purposes of this controversy is to be determined without regard to the one controlling and essential feature which would determine its real, actual or fair value in every other conceivable relation.

We may suppose that a legislature was about to regulate the charges of a hotel in Kansas City, situated as conveniently as the Arlington Hotel is situated in Wash-

ington. In ascertaining the value of the property, would it be just to discard its value for hotel purposes and value it as naked land plus the value of the improvements? Would this basis be fair even in a condemnation proceeding? Would not the owner be entitled to show the special value of the property and its large earning capacity for hotel purposes? Would it be held that the only values to be considered in a court of justice were the bare or naked land and the cost of reproduction? How preposterous it would sound for counsel to argue that the hotel owner could buy cheaper land a mile or two away and build a hotel there! Take the case of the large dry-goods concern at Kansas City, the Emery-Bird-Thayer Dry Goods Company.[1] It occupies a large building, which is valued at several hundred thousand dollars an acre. If that land were about to be condemned for a railroad station, would not the owners be entitled to show that the property was especially valuable in that locality for the retail dry-goods business? It would obviously be grossly unjust to compel the owners to accept compensation upon the basis of bare land and cost of rebuilding. How unreasonable it would sound for counsel to argue that the owners could secure an equal amount of land a mile or two away from the business centre, and there build an equally large store!

Yet in the case at bar the Attorney-General suggested below, and may urge again, that the owners of the Kansas City stock-yards might move elsewhere, where they could secure cheaper land, but where, of course, they never could secure the advantage of adjacent packing plants and railroad terminals without the expenditure of many millions of dollars.

[1] Situated at Walnut and Eleventh Streets, Kansas City.

If we take the testimony of the appellants' witness we shall find the value of the bare land divested of all i provements to be fully $5,000,000 for stock-yards p poses, or $1,400,000 more than the master estimated. T would be an average valuation of $40,000 an acre, $4,000 a lot. The master only allowed an increase of $580,6 for the whole period from January 1, 1884, to June, 18 or over thirteen years, the period of the greatest dev opment of the city. That the land had increased $995,0 between 1871 and 1883 was not disputed. This was t increase which was capitalized on the reorganization January, 1884. As matter of fact, the land has increas over $2,000,000 since January 1, 1884 (pp. 491, 497, 5 542, 543, 556, 563, 564, 571).

In addition to this value as bare naked land, we ha great improvements now worth, after deducting deprec tion, fully $1,480,000, and used in connection with immense business. It cannot be doubted that, as b tween men dealing in the markets of the world, t value of such a property would be more than the ba value of the naked land and of second-hand materials. we allow any fair amount for this combination, we sh easily conclude that the minimum valuation of $9,000,0 for the whole, as testified to by the complainants' witness is not at all excessive and fully justifies the premium which the stock had sold. The summary on page 57 this brief will show how this is made up.

The rule which obtains in condemnation proceedin under the exercise of the power of eminent domain as what should be the elements in estimating the value property may assist by way of analogy, although there a many equities entitling us to more consideration than usually accorded a property owner where, under conde

nation proceedings, his property must be taken for a necessary public use. (See the suggestion of Mr. Justice Brewer in *Ames* v. *Union Pac. Ry. Co.*, 64 Fed. Rep. 165, 178.) Yet, the court below refused to accord even what would be just in condemnation proceedings.

In *Boom Co.* v. *Patterson*, 98 U. S. 403, it appeared that the boom company had been invested with the power of eminent domain and was seeking to condemn parts of two islands. The land in question, if assessed simply according to its value as bare land, aside from any consideration of its value for boom purposes, was worth only $300; but, in view of its adaptability for those purposes, the jury found a further and additional value of over $9,000, making the total allowance $9,358.33. The trial court reduced the verdict to $5,500, and the question argued in this court was as to the principle upon which the compensation was to be estimated. Mr. Justice Field, delivering the unanimous opinion of the court and reviewing the authorities, used the following language (p. 407):

> "In determining the value of land appropriated for public purposes, the same considerations are to be regarded as in a sale of property between private parties. The inquiry in such cases must be what is the property worth in the market, viewed not merely with reference to the uses to which it is at the time applied, but with reference to the uses to which it is plainly adapted; that is to say, what is it worth from its availability for valuable uses. Property is not to be deemed worthless because the owner allows it to go to waste, or to be regarded as valueless because he is unable to put it to any use. Others may be able to use it, and make it subserve the necessities or conveniences of life. Its capability of being made thus available gives it a market value which can be readily estimated.
>
> "So many and varied are the circumstances to be taken into account in determining the value of property condemned for public purposes, that it is perhaps impossible to formulate a rule to govern its appraisement in all cases. Exceptional cir-

cumstances will modify the most carefully guarded rule; but as a general thing, we should say that the compensation to the owner is to be estimated by reference to the uses for which the property is suitable, having regard to the existing business or wants of the community, or such as may be reasonably expected in the immediate future."

In the case of *National Waterworks Co.* v. *Kansas City*, 62 Fed. Rep. 853, Mr. Justice Brewer was called upon to investigate and determine the principle upon which a water company should be compensated when its property was taken by the city under the reserved right to do so at the expiration of the franchise. The argument advanced on behalf of the city was that the value should be limited to the cost of reproducing the plant. This case was never appealed, and the city acquiesced in the finding of the court. In the course of a very carefully prepared opinion, Mr. Justice Brewer said (p. 865):

"It is obvious that the mere cost of purchasing the land, constructing the buildings, putting in the machinery, and laying the pipes in the streets—in other words, the cost of reproduction—does not give the value of the property as it is to-day. A completed system of waterworks, such as the company has, without a single connection between the pipes in the streets and the buildings of the city, would be a property of much less value than that system connected, as it is, with so many buildings, and earning, in consequence thereof, the money which it does earn. The fact that it is a system in operation, not only with a capacity to supply the city, but actually supplying many buildings in the city,—not only with a capacity to earn, but actually earning,—makes it true that 'the fair and equitable value' is something in excess of the cost of reproduction. The fact that the company does not own the connections between the pipes in the streets and the buildings—such connections being the property of the individual property owners—does not militate against the proposition last stated, for who would care to buy, or at least give a large price for, a waterworks system without a single connection between the pipes in the streets and the buildings adjacent. Such a system would be a dead structure, rather than a living and going business. The additional value created by the fact of many connections with buildings, with actual supply

and actual earnings, is not represented by the mere cost of making such connections. Such connections are not compulsory, but depend upon the will of the property owners, and are secured only by efforts on the part of the owners of the waterworks, and inducements held out therefor. The city, by this purchase, steps into possession of a waterworks plant,—not merely a completed system for bringing water to the city, and distributing it through pipes placed in the streets, but a system already earning a large income by virtue of having secured connections between the pipes in the streets and a multitude of private buildings. It steps into possession of a property which not only has the ability to earn, but is in fact earning."

See also *Monongahela Navigation Co.* v. *United States*, 148 U. S. 312, 326, 328; *Grant* v. *East & West R. Co.*, 54 Fed. Rep. 569, 576; *Dupuis* v. *Chicago & North Wisconsin Ry. Co.*, 115 Ill. 97, 100; *Chicago, Peoria & St. Louis Ry. Co.* v. *Eaton*, 136 Ill. 9, 14; *Snouffer* v. *Chicago & Northwestern Ry. Co.*, 105 Iowa 681; *Drury* v. *Midland Railroad*, 127 Mass. 571, 582; *Columbia Delaware Bridge Co.* v. *Geisse*, 38 N. J. Law 39, 42; *Miller* v. *Windsor Water Co.*, 148 Pa. St. 429, 439; *Mifflin Bridge Co.* v. *Juniata Co.*, 144 Pa. St. 365, 367; *Montgomery Co.* v. *Schuylkill Bridge Co.*, 110 Pa. St. 54, 59; *Rippe* v. *Chicago, D. & M. R. R. Co.*, 23 Minn. 18, 23.

It is, therefore, submitted that the testimony of the complainants' witnesses, who alone valued the property for stock-yards purposes, must be accepted, and that their minimum valuation fairly establishes at least $5,000,000 as the value of the bare land without improvements.

3.

As to the stock dividends.

Between 1871 and 1894 the owners of the stock-yards property from time to time invested in the enterprise $2,484,500 in cash, and they received for their contributions an equal amount of stock at par. All of

the stock at any time sold was subscribed and paid for in cash at par. The company also invested year after year a large part of the surplus earnings in new property or permanent improvements. In other words, instead of dividing all the earnings and issuing stock or bonds for the funds to make necessary improvements, they invested surplus earnings. Of these surplus earnings, $2,369,173 were capitalized, and stock was issued to the stockholders at par to represent their respective distributive shares in these earnings.

The Attorney-General suggests in his brief, as a prejudicial circumstance, that these stock dividends, representing permanent investments made from earnings of the company, were "issued to the stockholders without the payment of any money by them" (p. 4). While this is true in the letter and form, it is not true in the spirit and substance. There is absolutely no dispute that net profits of the company were invested in the purchase of additional land and in permanent improvements to the amount of at least $2,369,173, for which capital stock was issued. There can be no question, either in law or common sense, that the stockholders could every year, from the beginning, with perfect propriety have taken out of the business all the net profits, and sold stock at par or bonds to procure the funds found necessary from time to time for the additional property and improvements. Instead of taking the money in dividends and then obtaining the necessary funds through sales of stock or bonds, the stockholders allowed the net earnings, which equitably belonged to them, to be permanently invested in the business, which was then constantly growing. If they had divided all the net earnings

and sold $2,369,173 of stock or bonds to the public, there would today be absolutely no question but that the business represented an investment of that amount. Added to the other cash contributed, it would make the total actual cash investment $4,853,673. This court will look at the substance and not at the form; and it will never hold that the owners of this stock-yards property are prejudiced because, instead of dividing all net earnings and selling new stock or bonds for new property and improvements, they saw fit to adopt the more conservative course of using the net profits and representing such capital expenditures by stock dividends.

It is also suggested, as a prejudicial circumstance, that dividends were issued to represent the increased value of the lands. Now, if there was an increase in value, this was a perfectly honest and legitimate transaction. If there was no increase in value, it was not honest or legitimate, and would constitute a most objectionable form of stock watering, which no court should take into consideration in determining the true value of any property. As we have already seen, the Attorney-General frankly admits that "this property has greatly increased in value since the organization of the stock-yards," and concedes that the increase in value was as reported by the master, namely, $1,536,031 above cost (record, pp. 64, 77; defendant's brief, p. 73). The only capital stock issued to represent increased values was $995,000 in 1884 on the organization of the new company and $1,058,067 in 1888, making together $2,053,067, which covers the whole period of twenty-seven years and the growth of Kansas City from a village to a great city. Therefore, the only dispute can be as to the difference between the increase found by the master and the stock

issued, and that difference is $517,036. But there is absolutely no evidence that when these stock dividends were declared, the actual value of the property did not more than justify the amount of stock issued. Besides, the dividends were in 1883 and 1888, a period of prosperity and high values; and the testimony and valuation in 1897 were taken at a period of extraordinary depression of values all over the country and particularly in and about Kansas (pp. 442, 445, 489, 520). There should be no reasonable doubt that the increased value of the land was very much more than the stock issued to represent increased value.

The Attorney-General states that the increased value of land capitalized by the issue of stock amounted in the aggregate to $2,593,067 (brief, pp. 4, 5). This is clearly an error, which has resulted from a mistake made by the master in the table prepared by him and printed in the record at p. 79. The master reported, as part of "the stock dividends based upon increased value of lands" $40,000 of stock issued at par in 1879 to Fowler Brothers and $500,000 issued at par in 1893 to the Armour Packing Company for the purpose of inducing them to establish packing plants in the immediate vicinity of the yards (p. 61). There is no pretense that Fowler Brothers and the Armour Packing Company did not receive this stock, nor is there any doubt that it was issued as the equivalent of an equal amount in cash. It is not contended that this stock was improperly or improvidently issued or without full value received, or that the stock-yards company and the market at Kansas City have not been immeasurably benefited thereby. The propriety of the expenditure is discussed below on pp. 53-55 of this brief. But in any event, whether the issue or payment was wise or not, no court can possibly hold that this payment to third par-

ties constitutes, directly or indirectly, in any shape or form, a stock dividend distributed among the stockholders.

Another branch of this feature of stock dividends should be explained. Between 1871 and 1884, the original company from time to time increased its capital stock to represent either money put in or undivided earnings invested in additional property, betterments, improvements or extensions. In December, 1883, the par value of its capital stock was $995,000, and it represented either cash put in or, what is the equivalent, earnings re-invested. In the meantime, that is to say, between 1871 and 1883, the property had increased in value with the advance of the city itself and the increase of all surrounding property, so that the value of the land and improvements then actually used or retained for stock-yards purposes amounted to at least $1,990,000 irrespective of other lands not used for that purpose and which were not then transferred. *The testimony is undisputed that these lands and improvements were then fairly valued and were actually worth at least $1,990,000* (pp. 212, 213, 217, 218, 230). *None of the witnesses called on behalf of the defendant ventured to contradict the complainants' testimony as to the value of the property in 1884, and no evidence in the case tends in the slightest degree to impeach or lessen the effect of the direct proof that the property retained in 1884 for stock-yards uses was worth at least $1,990,000.*

The stock-yards company in December, 1883, determined to increase its capital stock to the true value of the property it owned and used for stock-yards purposes. It found it impossible under the laws of Kansas to further increase the capital of the existing company, and therefore a new company was organized with substantially the same

name, and to this new company the old company sold its stock-yards property for $1,990,000, which was paid in new capital stock at par. As the record clearly establishes that this property was then worth at least that amount, there is obviously no ground for criticising or condemning the change of capital or reorganization. Instead of selling the property, as could easily have been done, realizing $1,990,000, and distributing it among the stockholders, the company saw fit to reorganize and recapitalize the business, and place the par of the capital stock at what was indisputably the fair, true, honest and intrinsic value of the tangible property it represented. If the property, which then covered nearly one hundred acres, with the buildings, pens and other improvements thereon, had increased or doubled or trebled in value by reason of the development of the city and of the market, the owners were by every rule of justice and common fairness entitled to the benefit of that increase. The substance of the transaction was to give the stockholders of the old company two shares of new stock for one share of old stock; and the result was the same as if the company had then sold its property for $1,990,000 in cash, and had distributed the proceeds *pro rata* among the stockholders. In a word, the stockholders got $200 in stock for each existing share instead of $200 in cash. This was in no sense a watering of stock. Of course, it is not claimed on behalf the complainants that the fact that a new company was organized instead of increasing the capital stock of the old company makes any substantial difference; but it is insisted that the transaction was in every aspect legitimate, for it was perfectly proper and honest, legally and morally, to increase the stock if the valuation clearly justified it.

4.

As to the expenditures for establishing packing plants and as to working capital.

The evidence shows and the master found that the stock-yards had paid in cash, land and stock $817,944.28 in order to induce the establishment of packing plants in the immediate vicinity of the yards, and thus create a constant demand and stable market. The master's report briefly summarizes this feature of the case as follows (pp. 60–61):

> "At the date these yards were opened by the Kansas Stock Yard Company, there were no packing-houses at Kansas City, but soon thereafter a small one was established by Bigger & Company, with a daily capacity of from 100 to 150 hogs. This was followed by the erection of several beef, pork and mutton packing establishments in the immediate vicinity of the yards, with a large capacity for the slaughtering of live stock, amounting in 1896 to 894,537 cattle, 58,331 calves, 2,263,143 hogs and 685,727 sheep. Many of these establishments were secured to locate at Kansas City and in the immediate vicinity of the yards by the energetic, persistent and continued efforts of the defendant company, and of the company to whose rights it succeeded as hereinafter set forth, by the payment of large sums of money, the conveyance of valuable real estate, and the issuance and delivery of shares of its capital stock. . . All of these companies are now actively engaged in business near the yards, except Kingan & Co. and Hollis & Co., neither of which has been in business for at least two years last past."

The question is whether this necessary expenditure ought properly and fairly to be considered in determining the amount upon which a reasonable rate of interest or return may be earned. Of course, the fact that in two instances stock which was worth above par was issued instead of money (p. 318) cannot make any difference. The stock itself could have been sold and the money paid over.

All the witnesses agreed that the existence of these packing plants in close proximity to the yards was the main cause of the growth and stability of the

market at Kansas City (*e. g.*, p. 451). The necessities of these plants create the constant demand, and without these packing houses the market would not exist. Indeed, during the year 1896, these packing plants bought one-half of all the cattle sold at the yards and four-fifths of all the hogs (pp. 144, 174, 320, 321, 327, 353, 394, 399, 434, 451). Moreover, the increase in the business of the yards has been most pronounced since the establishment of these packing plants (p. 399).

This expenditure on the part of the stock-yards company has undoubtedly created the market more than any other cause, and it has correspondingly benefited Kansas City and all the patrons of the yards. The results have demonstrated the wisdom and success of the policy. Is it not fair and just that this expenditure, as much for the benefit of the owners of live stock using the yards as of the owners of the yards themselves, shall be considered in determining the amount upon which the stock-yards company is entitled to a fair return? Of course, in any other transaction in life, this necessary outlay would at once be recognized as a legitimate capital expenditure and as having greatly increased the permanent value of the enterprise and property. It is submitted that it constitutes a fair element and a just equity in determining the values as between the public and the owners of stock-yards. There can be no reasonable doubt that as matter of law such expenditures out of the capital of a corporation are proper, particularly when shown to have resulted advantageously. Nor can it be doubted that the courts would treat such an investment of capital as property subject to taxation.

It would be a fair and just rule that, in considering what the patrons of the yards should rightly pay, a court of equity may allow for reasonable expenditures to bring to the yards

the buyers, without whose presence the market would be worthless to the owners of live stock. How strong is the equity when it appears that the fruits of this policy are to realize for the live stock owner more than he can procure at any other yard, and to benefit the class using the yards at least $1,500,000 per annum in better prices than are obtainable at other yards (p. 74). Counsel submit that it would be a most unjust result to allow the live stock owners to use the yards and profit by these expenditures, and yet to refuse to contribute anything towards the expense of the necessary outlay which has benefited them so materially.

It was also shown that the stock-yards company had on hand in its business some $400,000 in cash and credits (p. 76). This was entirely thrown out by the master. There should hardly be much need of arguing the proposition that such a concern must have a reasonable amount of working capital. It is called upon to advance freights to the railroads and otherwise constantly disburse funds. It is pressing the stock-yards owner altogether too far to say, and it would be grossly unjust to hold, that the cash working capital which he finds necessary to carry and have on hand for use in the business and the *accommodation of the patrons of the yard* is not to be considered as any part of the capital invested upon which some return is to be expected. What paralysis would seize the business if the stock-yards company were to refuse to advance freights, &c., and compel each owner of live stock to finance for himself.

The master excluded two parcels of land which should have been included in the lands used for stock-yards purposes. They are the tracts lettered (*d*), 8.028 acres, and (*e*), 12.122 acres, in the master's report (p. 75), and are

valued by him as respectively worth $41,140 and $85,000 or a total of $126,140. The land was acquired and is held for present and future stock-yards purposes, and is clearly a necessary part of the plant. As matter of fact, the two tracts are used for the dumping of manure and offal; and if not so used, other property would have to be bought or leased for that purpose (pp. 167, 169, 193, 246). Foster, D. J., refers, at page 872, to the omission of these parcels by the master and clearly intimates his view that they should have been included as a necessary part of the stock-yards plant, for he includes their value in his estimate. Under the evidence in the record, there should be no other reasonable or just conclusion than that these parcels should be added to the master's valuation.

5.

Summary.

We may now summarize the argument, so as to show the investment in the enterprise upon the master's basis of valuation and upon the basis of the fair present value for stock-yard purposes.

As to the master's basis of valuation:

1.	Master's valuation of stock-yards land as bare land without improvements	$3,600,626 00
2.	Omission of parcels used for dumping manure and offal	126,140 00
3.	Master's valuation of improvements *after deducting depreciation*	1,480,000 00
4.	Master's valuation of supplies, feed, &c	307,377 25
5.	Working capital, consisting of cash and credits	400,000 00
6.	Expenditure for packing plants	817,944 28
		$6,732,087 53

Upon this basis, if six per cent. be a reasonable interest, $403,925.25 would be required; yet, it appears that the statutory rates would only have produced net $176,322.71 after deducting the cost of the improvements or depreciа-

tion. This is about two and one-half per cent. upon the value of the investment estimated as above.

But if we take the fair present value of the land for stock-yards purposes, the result would be:

1.	Valuation of land for stock-yards purposes, at least..	$5,000,000 00
2.	Master's valuation of improvements	1,480,000 00
3.	Master's valuation of supplies, feed, &c	307,377 25
4.	Working capital, consisting of cash and credits,	400,000 00
5.	Expenditures for packing plants	817,944 28
		$8,005,321 53

Six per cent. upon this valuation would require $480,319.29, whilst the statutory rates would only produce $176,322.31, or about two per cent.

But if the valuation were governed by the fair value of the plant in its present condition as an entirety or unit of operation or by the market value of the stock, these figures could easily be increased to the minimum of the complainants' witnesses, namely, $9,000,000, which might be stated as follows:

1.	Valuation of land for stock-yards purposes as testified to by Mr. Morse and exceeded by many witnesses (p. 192)	$5,685,240 00
2.	Master's valuation of improvements	1,480,000 00
3.	Master's valuation of supplies, feed, &c	307,377 25
4.	Working capital, consisting of cash and credits	400,000 00
5.	Expenditure for packing plants	817,944 28
6.	Good-will on master's valuation (p. 78)	780,000 00
		$9,470,561 53

Six per cent. upon this basis would require $568,233.69, whilst the statutory rate would afford $176,322.31, or 1.8 per cent.

As Mr. Justice Brewer said in *Adams Express Co.* v. *Ohio*, 166 U. S. 185, 220:

> "What a mockery of substantial justice it would be for a corporation, whose property is worth to its stockholders for the

purposes of income and sale $16,800,000, to be adjudged liable for taxation upon only one-fourth of that amount. The value which property bears in the market, the amount for which its stock can be bought and sold, is the real value. Business men do not pay cash for property in moonshine or dreamland. They buy and pay for that which is of value in its power to produce income, or for purposes of sale."

So in the case at bar, what a mockery it would be to hold that, although the market value of the stock has ranged always above par, and most of the time at a premium of from fifteen to forty per cent. for every purpose of income and sale in the markets, representing a value of $8,400,000 to $10,300,000, nevertheless, it must shrink to about 73 per cent. of par, or $5,388,003.25, the moment the state sees fit to interfere for the benefit of the class using the yards.[1]

These showings would be still worse if all the property which the stock-yards company owns were included. It is a hard rule which would deny it a return upon property which was purchased for probable use in the business and exclude it simply because it does not earn anything as yet. So also as to the horse and mule department.[2] Any reasonable and fair business man would at once recognize that accommodations for horses and mules are now necessary for any stock-yards, for farmers ship all kinds of live stock; yet because this department is not affected by the charges and produces little profit as yet on the actual investment, it was thrown out of consideration by the master and court below. This is as unfair as if the legislation had omitted to regulate the rate for sheep

[1] That this capital stock would be a just basis of valuation for taxation, see, also, *Ryan* v. *Commissioners of Leavenworth Co.*, 30 Kans. 185, 189; *Porter* v. *Rockford, Rock Island, &c., R. R. Co.*, 76 Ill. 561, 588.

[2] The Attorney-General insists upon deducting the cost of the horse and mule department (brief, p. 74), but in so doing inadvertently stated the figures incorrectly. On the eighth line of p. 74 there is a mistake in subtraction of $1,000,000, which error quite destroys the value of the figuring that follows.

or calves, and it were held then that the sheep or calf department should be disregarded if it did not produce much profit. Of course, this claim as to the horse and mule department would never have been hinted at if that branch of the business had shown a substantial profit.

It is, however, unnecessary to discuss all these items and details. The court will consider this important case on broad lines; and the appellants' position is too strong upon the main features to require any extended argument of incidental points. There will be just allowances for what should be considered as fair elements in determining the value of the property and the value of the service as between man and man. If the court shall conclude that in justice at least six per cent. interest or return under all the circumstances should be allowed as the right of the property owner—and the Attorney-General seems to concede this—and shall be satisfied that either the cost of the improvements or a proper allowance for depreciation should be deducted from income, there will be no difficulty in deciding as matter of fact that the return is much less than three per cent. in any aspect, and as a matter of law that this act of the legislature of Kansas imposes unreasonable charges on the owners of stock-yards property, and is in violation of those property rights which the Fourteenth Amendment protects.

V.

THE VALUE IN THEMSELVES OF THE SERVICES RENDERED AND THE REASONABLENESS OF THE CUSTOMARY CHARGE COLLECTED BY THE STOCK-YARDS COMPANY.

The element of the value in themselves of the services rendered was entirely disregarded in the court below, and it was apparently assumed that the only basis of computation should be the value of the property used by the public.

In neither the master's report nor in the opinions delivered by Foster, D. J., and Thayer, C. J., will there be found any discussion or finding as to the value of the service rendered to the owners or shippers of cattle and other live stock. All that the master finds is that the charges are substantially the same as those collected in other yards, and that the price realized by live stock owners at Kansas City is far in excess of the prices obtainable in the Chicago market. Yet it is now perfectly well settled that the fair value in themselves of the services rendered to the public must be taken into consideration in determining judicially the reasonableness of the charges made. *San Diego Land Company* v. *National City*, 174 U. S. 739, 757.

The failure below to give any weight or to devote any attention to the value in themselves to the patrons of the yard of the services rendered was due to the idea that this element was not material, or, at any rate, was to a greater or less extent precluded by the legislation, if the results of the rates prescribed were not *confiscatory*. This, it will be noticed, is the case in the brief now filed on behalf of the Attorney-General. Apparently, it is assumed that the value in themselves of the services is not open to investigation, if the legislative rates would produce a *reasonable* interest upon the value of the investment, although this is more favorable to the stock-yards than the view of the court below. Indeed, it is asserted by the Attorney-General that the stock-yards company could have heretofore legally collected extortionate or unreasonable charges "in the absence of a statute to the contrary" (defendant's brief, p. 29).[1] This is not the law. The

[1] The language of the Attorney-General is (pp. 29, 34): "The dealers are compelled to patronize these yards and to pay prices which the company may see fit to charge for its services, in the absence of a statute to the contrary; consequently, the greater the extortion perpetrated at the

common law rule required such charges to be reasonable if the business were impressed with a public interest; and these statutes are only sustained because at common law this was the rule. The common law is in effect itself a regulation of reasonable charges (*Munn* v. *Illinois*, 94 U. S. 113, 134). It has never been held in any case that the legislative fiat could impress a business with a public interest if the public interest did not already exist. This error of view has been the cause of the disregard below of the element of the reasonableness in themselves of the charges made irrespective of the effect upon net earnings. It was contended that the evidence of customary charges in the past was immaterial and at first it was so ruled by the master (record, p. 107), probably because the theory was that, "in the absence of a statute to the contrary," stock-yards companies could charge what they saw fit. On the contrary, it should have been recognized that the common law regulating the charges in the past equally imposed the restriction that they should be reasonable. Hence, the evidence of the customary charge is of great weight —indeed, of almost controlling effect—if we bear the true rule in mind and reflect that this customary charge has been in effect for a quarter of a century, but the customary charge is of little weight if we adopt the view of the Attorney-General.

I.

Counsel for the appellants submit that the basis of compensation, in the majority of cases affecting private

yards the greater the income from its business, and the greater the market value of its capital stock. * * It is apparent that the market value of the capital stock of a corporation engaged in a competitive business, in which the earnings are more or less problematical, would naturally be more nearly equal to the value of the property owned by the corporation than *in the case of a corporation possessing an absolute power to compel whatever earnings it might see fit to make.*"

property, should be the reasonable value of the service actually rendered, and not the return upon the value of the particular plants; although, under either aspect, the statutory rates in the case at bar are unreasonable. This element of the value of the service itself, as a general rule, will be found to furnish the simplest and fairest standard, just alike to the public and to the property owner; and it will involve less difficulty and embarrassment to the courts than any other rule. The appellants also submit that the customary stock-yards charge ought to be presumably a reasonable charge in view of its long continuance and universal effect and of the settled rule at common law that such charges must be reasonable.

If, for example, the business of the Kansas City stock-yards were now about to be started for the first time, with a plant costing $5,000,000, without the adjoining packing houses, and with receipts of only 167,000 head of live stock, as in 1871, or only 1,979,000 head as in 1883, instead of 5,471,000 head as in 1896, and if the company had the prospect of many years of risk, labor, expenditure and waiting before a large or paying business at customary rates could possibly be established, would it not seem unreasonable for the company to charge fifty cents or one dollar a head upon cattle when all other yards charged twenty-five cents? Yet the excessive charge of one dollar might be necessary to pay even operating expenses. It would, however, be legally unreasonable and unjustifiable, because it would be excessive having regard to the market value of the service, determined in great measure by the fact that in all other stock-yards in the United States the charge was only twenty-five cents for exactly the same service under substantially similar conditions. The courts would say that those who in-

vested in such an enterprise would have to take the risk and loss consequent upon the delay necessary to build up a sufficient trade to make the enterprise fairly remunerative under reasonable and customary charges. They would say that the owner must now bear the loss because, if successful in establishing a large market and trade, he would reap a corresponding profit. That this would be the law ought to be self-evident.

Again, we may suppose that the business of the stock-yards company decreases one-half by reason of the establishment of competitive yards and packing houses in other localities perhaps better suited to meet changed business conditions. In such a case, the expenses of operation would continue the same, and it might be necessary for the stock-yards to double or treble its charge in order to create a fair return upon the reasonable value of the property. But surely the company could not, simply to make up the decrease in receipts, increase its charge above the customary charge of other yards and the reasonable value of the service.

The very large tract of land, more than 125 acres, now used by the company for stock-yards purposes, may in the future double or treble in value. The present value of the land, surrounded as it is by a great city becoming more and more populous, may increase manyfold. A fair return upon the increased value of the property might require a great increase in the charges. Would a court hold that, merely because the property had thus increased in value, the stock-yards company could increase the customary charge for the service rendered? The court would say, as was said in *Munn* v. *Illinois*, that, if the property became so valuable, the owner might "withdraw his grant by discontinuing the use; but, so long as he maintained the use,

he must submit" to the requirement of reasonable charges. A just decision would then be that the primary consideration was not what the owner of the stock-yards should earn on the present value of his investment, but rather the reasonableness in itself of the customary charge irrespective of the result upon net earnings. *Covington, &c., Turnpike Co.* v. *Sandford*, 164 U. S. 578, 596.

All these considerations and risks must persuade the court that there are great equities in support of the contention of the appellants, that so long as the stock-yards company continues to make the customary charge, the public is not injured and the legislature cannot interfere.

As bearing upon the view that the true test should be the value of the service in itself, reference may be made to the language of Mr. Justice Bradley in *Transportation Co.* v. *Parkersburg*, 107 U. S. 691, 699, viz.:

> "It is also obvious that since a wharf is property, and wharfage is a charge or rent for its temporary use, the question whether the owner derives more or less revenue from it, or whether more or less than the cost of building and maintaining it, or what disposition he makes of such revenue, can in no way concern those who make use of the wharf and are required to pay the regular charges therefor; provided, always, that the charges are reasonable and not exorbitant."[1]

And in *Canada Southern Railway Co.* v. *International Bridge Company*, 8 App. Cas. 723, 731, the English rule is vigorously expressed as follows by Lord Chancellor Selborne:

> "It certainly appears to their Lordships that the principle must be, when reasonableness comes in question, not what profit it may be reasonable for a company to make, but what it is reasonable to charge to the person who is charged. That is the only thing he is concerned with. They do not say that the case may not be imagined of the results to a company being so enormously disproportionate to the money laid out upon the undertaking as to make that of itself possibly some evidence

[1] Quoted with approval in *Ouachita Packet Co.* v. *Aiken*, 121 U. S. 444, 449.

that the charge is unreasonable, with reference to the person against whom it is charged. But that is merely imaginary. Here we have got a perfectly reasonable scale of charges in everything which is to be regarded as material to the person against whom the charge is made. One of their Lordships asked Counsel at the bar to point out which of these charges were unreasonable. It was not found possible to do so. In point of fact, every one of them seems to be, when examined with reference to the service rendered and the benefit to the person receiving that service, perfectly unexceptionable, according to any standard of reasonableness which can be suggested. That being so, it seems to their Lordships that it would be a very extraordinary thing indeed, unless the legislature had expressly said so, to hold that the persons using the bridge could claim a right to take the whole accounts of the company, to dissect their capital account, and to dissect their income account, to allow this item and disallow that, and after manipulating the accounts in their own way, to ask a Court to say that the persons who have projected such an undertaking as this, who have encountered all the original risks of executing it, who are still subject to the risks which from natural and other causes every such undertaking is subject to, and who may possibly, as in the case alluded to by the learned Judge in the Court below, the case of the Tay Bridge, have the whole thing swept away in a moment, are to be regarded as making unreasonable charges, not because it is otherwise than fair for the railway company using the bridge to pay those charges, but because the bridge company gets a dividend which is alleged to amount, at the utmost, to 15 per cent. Their Lordships can hardly characterize that argument as anything less than preposterous."

2.

In seeking to determine the value in themselves of the services rendered in the case at bar to the owner of live stock using the yards for his convenience and profit, the first feature that stands out prominently in the record is that the yardage and attendance are free unless the live stock is actually sold. The owner of cattle, etc., therefore, has the privilege of using the yards without any charge unless he finds a buyer at a price satisfactory to himself. A large portion of the live stock is consigned to

Chicago or other yards, with privilege of sale in Kansas City (p. 69), for the very purpose of going elsewhere if not satisfied with the price obtainable. There is no compulsion as to the payment of yardage. The practical result is that the stock-yards company really guarantees a better market than elsewhere; and unless it continues to maintain its market as such, so that the prices are better than in other yards, fully one-half of the business will be at once diverted to Chicago or other points. The owner of live stock is also entitled to keep his cattle in the yards as long as he pleases, and until he finds a satisfactory market (p. 403). For this reason and for others shown in the testimony (p. 367), the company must provide accommodations for the maximum possible requirements, and if the market—that is, the buyers—fail them, they lose not merely the profit, *but the cost of operation and maintenance.* This consideration of free yardage was given no weight below; yet it does fairly bear upon the question as to the value of these yards to the owners of live stock and upon the claim that the customary charges are reasonable.

The second prominent feature is that the yards are kept in better condition and have more facilities than the yards at other points (p. 179), and that the owner of live stock consequently obtains better prices than elsewhere. These better prices are undoubtedly the result of the greater facilities and accommodation furnished and of the expenditure made by the company in inducing packing plants to locate in the immediate vicinity of the yards. It appeared and the master found that, during the test year selected by consent—namely, 1896—shippers realized more than $1,500,000 in excess of the prices they would have obtained if the live stock had been

forwarded to Chicago (pp. 74, 123); that is to say, *they had realized, in excess of the prices obtainable elsewhere, enough to pay for all yardage and feed collected by the Kansas City company, and had left over $646,000 besides.*

When we reflect that the market was built up from practically nothing to what it is to-day principally by the efforts, ability and investment of the stock-yards managers, it must be evident that the value of the service rendered to the live-stock owner is more than equal to the customary charge collected. At any rate, the court will not wholly disregard these two equities in analyzing the evidence, weighing the merits in this case, and adjudicating the fair value of the services actually rendered and the just compensation which the stock-yards owner is entitled to receive.

The mere furnishing of yardage and pens is the smallest part of the services rendered. The cattle are received by the stock-yards employees from the railways at the shutes, and the responsibility of the stock-yards company begins from that time and continues until delivery to the buyer. They drive the stock to the pens, which may be selected by the owner; and one carload may be distributed into twenty pens if the owner so desires in order to better exhibit his shipment. The live stock is fed and watered. The next step is to weigh each lot of stock and record the weights, all of which is done by stock-yards employees. The live stock is then delivered either to the packing houses or to the railroads according to the lots sold. The stock-yards company is compelled to have constantly on hand a large force of employees (some 346 men), many of whom are highly skilled in the business. The company is not only liable for accidents, but it practically guarantees all the records and weights,

and assumes responsibility for deliveries, &c. Indeed, everything that an owner of live stock would at any ordinary market have to do for himself is done for him by the clerks and yardmen of the company, so as to facilitate prompt and satisfactory sales. The detail of the business may be imagined from the example testified to by one of the witnesses, who showed an instance of the making of twenty-one separate entries, receipts, notices or documents as necessary in connection with the yardage of one lot of cattle. And for all these services rendered and benefits conferred, the cattle owner pays twenty-five cents as against an average selling price of forty dollars per head; in other words, about one-half of one per cent. of the price actually realized, and then only in case of sale (pp. 67, 109, 119, 157, 158, 384, 393, 402, 419, 426, 464, 465, 472).

The charge, moreover, is the customary rate at all other stock-yards. There is no agreement to maintain these rates, and they have existed for a quarter of a century at the other yards.[1] The evidence shows the utmost competition and strife for business between these yards, and the master so finds (p. 74). It must be evident that, if the customary charges had been or were excessive, the force of competition would have led to a reduction. The reason why the competition has not produced any reduction is that the charge in itself is low, and that it is infinitely more important to increase the

[1] It appeared that the stock-yards company prior to 1893 had charged twenty cents per head of cattle, or five cents less than the customary charge at other yards. The managers found that the lower charge was doing no particular good, and they deemed it wiser to increase the rate to the customary charge and expend the additional income in adding to their facilities and accommodations (pp. 143, 400). In any aspect, the fact that four years before the act in question they had charged twenty cents, or five cents less than the customary rate, cannot tend to establish that fifteen cents is reasonable. Since then nearly two million dollars have been spent on the property.

facilities and accommodations and to create a constant demand and stable market. The charge is so small and reasonable that in itself it would not affect the market. The facilities for trade, the demand, the proximity of packing houses, the soliciting and advertising, the accommodations furnished, the presence of buyers—these are the features that make a market, and not the yardage charge. If the stock-yards company must now reverse its policy, cease making improvements and developing its business, the market will, in very few years, go back to Chicago and other yards. It is in truth no exaggeration to assert that, if the company made no charge for yardage, the market, far from increasing, would, in fact, be destroyed if the facilities and accommodations now furnished were curtailed, and the packing plants which the stock-yards company helped to establish were to be removed.

It is submitted that the proof that the charge exacted by a private carrier or warehouseman or innkeeper or stock-yards is the customary rate during many years for similar services under like conditions, should establish the reasonableness of such charge as matter of law in the absence of all evidence to the contrary. The evidence of the customary charge has been recognized from time immemorial as a proper basis for determining this question. It is in all other relations the basis of judicial decision: the value of services or property is always established in court by proof of customary charges.[1] It is the safest basis in the long run, particularly when it appears that the result is a profit not at all above what other owners of industrial property receive upon their investments.

[1] *Kock* v. *Emmerling*, 22 How, 69; *Erben* v. *Lorillard*, 2 Keyes (N. Y.) 567, 572.

In *L. E. and St. L. R. R. Co.* v. *Wilson*, 119 Ind. 352, 358, the court said:

"The law makes it the duty of every common carrier to receive and carry all goods . . and authorizes a reasonable reward to be charged for the service. The amount to be paid is, in a measure, subject to the agreement of the parties; but when the amount is not fixed by contract, the law implies that the carrier shall have a reasonable reward, *which is to be ascertained by the amount commonly, or customarily, paid for other like services.*"

In *Hopper* v. *Chicago, etc., R. R. Co.*, 91 Iowa 639, it was held that evidence of charges by other companies for similar services might be admissible if the conditions were shown to be substantially the same. See, also, *Johnson* v. *Pensacola, etc., R. R. Co.*, 16 Florida 623.

Speaking of the duty of common carriers at common law, Bronson, J., in *Cole* v. *Goodwin*, 19 Wend. 251, 261, said:

"It is agreed by all the books that, while he enjoys the privileges of a common carrier, there are certain duties pertaining to that office which he cannot escape in any form. In the first place, he is bound to receive passengers and goods, if he have room, and carry them for a reasonable reward, *which may be set down as the accustomed reward for like services.*"

Chancellor Kent also said of carriers (2 Com. 599):

"As they hold themselves to the world as common carriers for a reasonable compensation, they assume to do, and are bound to do, what is required of them in the course of their employment, if they have the requisite convenience to carry, and are offered a reasonable or *customary* price."

3.

Before the passage of the act of March 3, 1897, the legal right of the owner of stock-yards was clearly to receive a reasonable sum for any service rendered, notwithstanding the fact that the property had become impressed with a public interest. This right, whether we call it the liberty of the citizen or a property right, was of incalculable value. It

assured him, under the shield of the Federal Constitution,[1] the legitimate fruits of his labor and capital, and subjected him only to the risks of all commercial enterprises. He cannot be deprived of that right, nor can its beneficial enjoyment be substantially impaired by legislation, of which the only legitimate object should be the prescribing of reasonable charges. Whether or not we regard the legislative function as embracing the power to prescribe reasonable rates or to prevent unreasonable, extortionate and arbitrary charges—whatever language we employ—the substance of the right of the citizen must remain inviolable and protected against impairment. That is the essence of the American system of constitutional guaranties.

The matter in controversy is the reasonableness of the charge fixed by the legislature; and the controversy is to be determined after judicial investigation, "under the forms and with the machinery provided by the wisdom of successive ages for the investigation judicially of the truth of a matter in controversy."

A mere legislative enactment, in such a case as we are considering, cannot make that reasonable which without the enactment would not be deemed reasonable according to the ordinary rules of courts of justice. This court has not intended to formulate any rule which would give such a weight to a legislative enactment as would, by way of presumption or otherwise, substantially impair the personal liberty or property rights of the citizen. If the charge of the owner of a stock-yards or warehouse or ele-

[1] It is interesting to note that there is no provision of the Kansas constitution which expressly protects the liberty or property of citizens from impairment or encroachment. There is no provision requiring due process of law, found in almost every other state constitution. The Fourteenth Amendment alone seems to afford protection in that state against arbitrary or confiscatory legislation.

vator is reasonable, having due regard to the market value of the service rendered and the customary charge elsewhere, it cannot be made presumptively unreasonable simply because the legislature, acting on behalf of the class using the property and for the benefit of that class, has seen fit to reduce the charge nearly one-half. The power to prescribe what shall *prima facie* be deemed a reasonable charge in such a case as is before the court may be within the domain of the legislative branch as a matter of evidence or court practice; but more than that is "without its operative effect," to borrow the phrase of *Munn* v. *Illinois*. Neither the owner of cattle nor the proprietor of a stock-yard or cattle exchange is concluded, or his rights materially affected or impaired, by a mere legislative enactment.[1] Otherwise, a matter properly of judicial cognizance would find itself practically prejudged and determined by the legislature, which would act both as legislator and as judge.

Let us consider the question in two practical aspects. The owner of the stock-yards, there being no legislation, sues to recover a charge of twenty-five cents per head of cattle. The defense under the common law is that the business is impressed with a public interest; that the customary charge is unreasonable, and that fifteen cents is enough. It is shown, as was shown in the case at bar, that twenty-five cents has been the rate of charge for many years; that it is the rate for similar services at all other stock-yards; that experts, familiar with the business and fully qualified, testify that the charge is reasonable and fair in view of the service rendered (pp. 465, 472);

[1] *Louisville & N. R. Co.* v. *Railroad Commission of Tennessee*, 19 Fed. Rep. 679, 695; see also discussion in *Vanhorne* v. *Dorrance*, 2 Dallas 304, 312; *Monongahela Navigation Co.* v. *United States*, 148 U. S. 312, 327; *People* v. *Cannon*, 139 N. Y. 32, 43.

that an immense capital is invested and at hazard in the accommodations furnished; that a market and demand have been created at the cost and by the efforts of the owner of the stock-yards; that, by reason of these conditions and the artificial demand thereby created, the shipper realizes more than he would realize anywhere else; that the increased price thus obtained is very much more than sufficient to pay all charges for yardage and feeding; that no yardage is charged unless a satisfactory sale is made; that the owner of the stock-yards is responsible as insurer and renders many services in driving, taking care of the cattle, billing, guaranteeing numbers and weights, shipping, etc.; and that the whole charge for yardage and for the responsibility and labor in taking care of the cattle, including driving, putting in pens, transferring, facilitating advantageous sale, watering, weighing, guaranteeing, etc., was only about one-half of one per cent. of the price realized for the cattle. And, as here, no other evidence is offered. Would not any court of justice under such circumstances hold that the customary charge or market value obtaining for years at all yards was reasonable? The legislature, however, interferes; and, taking sides in the matter with the class using the yards, ordains a maximum rate of fifteen cents. The owner of the stock-yards challenges the reasonableness of the rate prescribed by the legislature, brings his rights before a court of justice for determination, and produces exactly the same evidence which was conclusive in his favor when establishing the reasonableness of his charge unaffected by the attempted legislative interference or regulation. And, again, as here, no evidence is adduced to the contrary. Is it the law that, although the testimony would be ample and conclusive according to ordinary rules of evidence to

establish the reasonableness of the charge in the case first stated, it is not sufficient to establish exactly the same *fact* or *conclusion* in the second case? If so, it is because of a legislative enactment. Does the legislative fiat then change the nature of the question? Does the subject matter of the controversy become essentially different? If the charge for a service rendered is judicially reasonable under one aspect, does it become unreasonable presumptively because so decreed by a legislature? In a word, is not reasonableness to be determined in both aspects by the same evidence and the same rules which, as Mr. Justice Blatchford said in the Minnesota case, have been provided by "the wisdom of successive ages for the investigation judicially of the truth of a matter in controversy"?

Let us also assume, for it will serve to point this branch of the argument, that the legislature, instead of reducing the customary charges, had doubled them, and that the farmer, shipper or cattle owner in Kansas or elsewhere was protesting against this enactment, and challenging in a court of justice the right of the legislature to impose, or of the owner of the stock-yards to collect an unreasonable charge. Whatever motive or inducement might have led the legislature to this act of regulation or generosity, would not the shipper or cattle owner be still entitled to say that no legislature could grant to private individuals, so circumstanced, the right to exact more than a reasonable charge for the service rendered? Could he not successfully invoke the protection of the courts against the taking away of what was previously his legal right, namely, to use the yards for the reasonable or customary charge? Would not the cattle owner most truly and forcibly argue that, if the legislature could give to a private warehouse or elevator or stock-yards company the right to exact unreason-

able and extortionate charges for private benefit, it would be neither more nor less in substance than holding that the legislature could grant to a private individual or corporation the right to impose an extortionate charge on the public for private benefit; and that the essence of such a power would be tyranny? The cattle owner would show that, during many years, twenty-five cents had been the usual and customary charge at Kansas City and all other points for a similar service, and that this was the market value of the use—that it was the fair value in itself of the yardage and attendant services, and would prove this by ordinary evidence, such as stated above. Can it be doubted that this court would hold that the legislative rate of double the customary charge or market value was unreasonable in the absence of sufficient grounds for the increase, in the absence of any public benefit or consideration? Is it to be conceived as possible that it would be held in such a case that the citizen was not entitled to relief from this arbitrary exercise of legislative power unless he could show more than we have stated, and overcome the strongest possible presumption in favor of the validity of the legislation or show that it was confiscatory or palpably a flagrant abuse of power? Would the court say that the burden of proof was such that the citizen was not entitled to relief unless he could show more than the facts we have mentioned? If this question ever comes before the court, and it is not improbable that it will, we may confidently assert that it will be held that no legislature can confer upon the owner of a stock-yard or warehouse or other private business the right to make more than a reasonable charge for the service rendered, and that at most the legislation merely created a *prima facie* excuse or warrant for what would otherwise be considered an extortion.

No rule of presumption would operate against the citizen. No burden of proof would bear him under, or deprive him of relief. His legal position and right would be substantially the same as if there had been no enactment, and the owner of the stock-yards had sought, without the support or cover or pretense of an arbitrary act of the legislature, to extort an unreasonable charge.

If, as may well be the rule, there is a strong legal presumption in support of legislation with respect to tax laws from considerations of a wise public policy, and with respect to railroad rates also because of public policy, and likewise because of the reserved power to regulate, nevertheless, the true rule in the case at bar must be that there is no such presumption and that the property owner comes into court free to establish the justice of the issue according to ordinary rules of procedure; that in so doing his legal rights remain unimpaired and unprejudiced by legislative fiat; and that he is to establish the truth of his claim by the same substantive evidence as he would without legislative regulation. The province and prerogative of the judiciary remain unchanged. We may well concede that the legislative rates are to be treated as *prima facie* reasonable as a rule of evidence requiring some testimony to overcome, but we submit that they have no more force; the enactment does not change or shift the burden of proof. Every lawyer knows that this *prima facie* effect is practically of great value; it compels the property owner to produce evidence in the first place, which is examined and scrutinized under the scorching test of adversary litigation; it forces him to prove the market value of the service and to show that his charges are the customary rates, or, if more than the customary rates, the facts which justify the excess. But if the stock-yards owner does pro-

duce such testimony tending to establish the reasonableness of the charge, and there is nothing in opposition but the legislative enactment, then he is entitled to judgment. Otherwise, the bare enactment places him at a material and prejudicial disadvantage, which in most cases would turn the protection of the Constitution of the United States into a mere mockery. In *Reagan* v. *Farmers' Loan & Trust Co.*, 154 U. S. 362, 397, Mr. Justice Brewer said:

> "Yet it has always been recognized that, if a carrier attempted to charge a shipper an unreasonable sum, the courts had jurisdiction to inquire into that matter and to award to the shipper any amount exacted from him in excess of a reasonable rate; and also in a reverse case to render judgment in favor of the carrier for the amount found to be a reasonable charge. *The province of the courts is not changed, nor the limit of judicial inquiry altered, because the legislature instead of the carrier prescribes the rates.*"

In *Smyth* v. *Ames*, 169 U. S. 466, 527, Mr. Justice Harlan said:

> "The idea that any legislature, state or Federal, can conclusively determine for the people and for the courts that what it enacts in the form of law, or what it authorizes its agents to do, is consistent with the fundamental law, is in opposition to the theory of our institutions. The duty rests upon all courts, Federal and state, when their jurisdiction is properly invoked, to see to it that no right secured by the supreme law of the land is impaired or destroyed by legislation. This function and duty of the judiciary distinguishes the American system from all other systems of government. The perpetuity of our institutions and the liberty which is enjoyed under them depend, in no small degree, upon the power given the judiciary to declare null and void all legislation that is clearly repugnant to the supreme law of the land."

In *Chicago, etc., Railway Co.* v. *Minnesota*, 134 U. S. 418, 458, Mr. Justice Blatchford said:

> "The question of the reasonableness of a rate of charge for transportation by a railroad company, involving as it does the element of reasonableness both as regards the company and as regards the public, is eminently a question for judicial investi-

gation, requiring due process of law for its determination. If the company is deprived of the power of charging reasonable rates for the use of its property, and such deprivation take place in the absence of an investigation by judicial machinery, it is deprived of the lawful use of its property, and thus, in substance and effect, of the property itself, without due process of law and in violation of the Constitution of the United States; and in so far as it is thus deprived, while other persons are permitted to receive reasonable profits upon their invested capital, the company is deprived of the equal protection of the laws."

The primary function of all government is the protection of the property and of the personal rights and liberties of the individual. Governments are created for that fundamental purpose. If there is a presumption, it is always, under the American system, in favor of the individual and of liberty of action. Indeed, when a court finds that the legislature for the first time seeks to regulate a business under the exercise of the so-called police power, and to radically reduce *customary* charges, it ought to be made to appear that the legislation is justified by some necessity, and that the extent of the interference with private business is reasonably necessary to prevent extortionate or unjust charges. We appreciate the disinclination of the courts to interfere with the legislative branch. Yet we must also recognize that the legislature should not be permitted to encroach, however slightly, upon the legitimate functions and prerogatives of the judicial branch. There is far more danger that the legislature will encroach upon the judicial branch than there is that the judiciary will ever encroach upon the legislative branch. As Webster so well said:

"It cannot be denied, that one great object of written constitutions is to keep the departments of government as distinct as possible; and for this purpose to impose restraints designed to have that effect. And it is equally true, that there is no department on which it is more necessary to impose restraints than

the legislature. The tendency of things is almost always to augment the power of that department in its relations to the judiciary." [1]

The most vital principle in the creation of our system of constitutional governments is the maintenance of clear lines of separation between the legislative and judicial branches; and the strict adherence to this separation of the different branches is the essence of a republican form of government.

The constitution of Kansas and the fundamental principle of our system of republican government vest the legislative power and functions in the legislature and the judicial power and functions in the courts. We know how anxious this court ever is not to encroach upon the legislative branch; but we also know that any encroachment upon the judicial branch, however slight, will be checked by that tribunal to which, above all others, is entrusted the duty of preserving constitutional government. If this class of legislation is to be construed as establishing more than *prima facie* evidence of reasonableness and as creating a presumption, more or less effective and binding upon the courts, and a heavier burden of proof than was previously required, then it is an interference with the judicial function in a matter which this court has declared is essentially for judicial investigation. It is true that every presumption should favor the constitutionality of an act of the legislature when we are dealing with the taxing power and other governmental functions, which in their nature and from sound grounds of public policy should be subject to revision or interference by the judiciary only in clear cases of abuse of power. It may be so in the regulation of tolls of public corporations. But it should

[1] Webster in "Independence of the Judiciary," Little, Brown & Co's. edition of works, vol. 3, p. 29; Ford's "Federalist," No. 49, pp. 334 *et seq.*

not be so in the case at bar. Above all constitutions, as well as prior to all constitutions, are the individual rights of liberty and property, which have never been parted with—those "equal and inalienable natural rights" which the constitution of Kansas declares are retained by the people, which the Fourteenth Amendment sought to protect against the assaults of temporary majorities, and in the support and defense of which it is the duty of the judiciary to be jealous against encroachment.

In the ever-to-be-remembered oration in the *Dartmouth College Case*, Webster said (4 Wheat. 518, 579, 581, 582):

> "If the constitution be not altogether waste paper, it has restrained the power of the legislature in these particulars. If it has any meaning, it is, that the legislature shall pass no act directly and manifestly impairing private property, and private privileges. It shall not judge, by *act*. It shall not decide, by *act*. It shall not deprive, by *act*. But it shall leave all these things to be tried and adjudged by the law of the land. . . Everything which may pass under the form of an enactment, is not, therefore, to be considered the law of the land. . . Such a strange construction would render constitutional provisions of the highest importance completely inoperative and void. It would tend directly to establish the union of all powers in the legislature. There would be no general permanent law for courts to administer, or for men to live under. The administration of justice would be an empty form, an idle ceremony. Judges would sit to execute legislative judgments and decrees; not to declare the law, or to administer the justice of the country."

VI.

THE ACT OF MARCH 3, 1897, HAS NO EXTRA-TERRITORIAL EFFECT AND DOES NOT APPLY TO THE FEED BUSINESS OF THE STOCK-YARDS COMPANY.

The predecessor of the present Attorney-General of Kansas contended below that the legislature of Kansas might properly regulate the yardage and feeding charges of the defendant company in Missouri because it was a Kansas corporation, and that position was taken in the

answer (p. 898). Attorney-General Boyle clearly intended to enforce the law as having an extra-territorial scope and effect and as applying to interstate commerce. The concession made by the present Attorney-General (brief, p. 19), that "there is nothing in the act which indicates any intention that it shall operate outside of the state,"[1] would seem to remove that feature from the case, for the court will not further consider, in view of this admission, whether the act has any force or effect in Missouri. The point that the act has no extra-territorial effect is discussed in the appellants' principal brief. The case, however, may be properly argued on both sides as if all the yardage and feeding were in Kansas, for that is the simplest way to test the general effect and result of these legislative rates. In other words, we may say, if Missouri and Congress should similarly regulate, what would be the effect on the whole business?

Although all the feed is ordered, sold and paid for in Missouri (record, pp. 65, 119), and, therefore, concededly beyond the scope of the act, it will be proper to consider briefly the effect of such legislation upon this branch of the business.

The feed was sold in 1896 at a price which was more than 100 per cent. in advance of the market price of the day before; and it is plausible to argue that an allowance of 100 per cent. above the market price ought to be reasonable. When, however, the nature of the business and the service rendered are analyzed, it will be evident that even 100 per cent. might not pay for the *cost* of the

[1] On the same page, it is added: "The question as to the extent to which the law may operate territorially is not involved in these actions. The issue in regard thereto is not framed in the pleadings, and the appellants are in error in claiming that we are urging that the law should have extra-territorial force."

service, and the figures submitted in the principal brie show that it would not.

The average amount of hay fed to cattle is 5 pound per head, for which the charge is 5 cents, and thi covers not only the hay itself but the service of feedin spreading on the floor, &c., &c.; the average charge pe hog is 1½ cents, and the average charge for sheep is les than ½ of one cent per head (pp. 110, 113, 120, 367, 36 387). The charge for each animal fed is obviously excee ingly low. The main cost of the service is, of course, i the labor, for there will be 20 deliveries to one ton hay (p. 142), and it will be fed to 400 cattle. Thus, if w take a ton of hay as a basis, we find that it is bough in large quantities and of the best quality and cost about $9 a ton including necessary insurance. It is sold fo $20 a ton, no matter what it costs, although the company ha had to pay as high as $15 and $24 a ton (p. 143). It i difficult to determine the cost of the labor of deliverin and feeding. It probably costs the stock-yards compan more than any other service rendered. It certainly cost at least 40 per cent. of the gross price realized. If w allow to this department its fair share of depreciation improvements and cost of barns, wagons, &c., the cost labor and maintenance is fully 52.51 per cent. There fore, the ton, which is retailed in 20 separate lots an fed to an average of 400 cattle per ton, realizes $20, mad up as follows:

(*a*) Cost at wholesale and insurance fully.....$9 00
(*b*) Labor at least 40 per cent. or..... 8 00
(*c*) Leaving a profit of less than 20 per cent. or..... 3 00
———$20

to cover the cost of maintenance and the fair proportio which this department should bear of the investmen which would be more than this nominal profit.

But, if we charge against the feed department its fair share of the cost of operation, maintenance and depreciation—namely, 52.51 per cent. of gross receipts—we shall have the result as follows:

(*a*) Cost at wholesale and insurance	$9 00
(*b*) Labor, etc., 52.51 per cent	10 50
(*c*) Leaving the profit per ton, for feeding 400 cattle, only	50
	$20 00

What would a court say of a statute regulating the charges of an innkeeper if it attempted to prescribe that all food should be sold at not to exceed one hundred per cent. over the market value at wholesale? It would sound fair and plausible: one hundred per cent. above *cost!* Yet it might be ruinous. It might represent no profit whatever. It would be shown that eggs, potatoes, fruits and meats are all bought at wholesale and sold for many times their original cost. Thus, eggs that may cost twelve cents a dozen at wholesale might be served by the innkeeper at five cents apiece—an increase of 400 per cent. over cost; but it would at once be recognized that this was not profit, and that labor and cost of operation, maintenance, rent, etc., probably showed little or no profit on the eggs. We are not here to ask a *profit* of 100 per cent. above cost. Far from it. The legislation is that no matter what the *cost* may be—original cost and cost of insurance, maintenance of barns, &c., labor in keeping and delivery and feeding—the price shall be arbitrarily fixed at 100 per cent. above the market of the day preceding.

The Attorney-General now contends that the statute means to limit the increase to 100 per cent. above the *retail* price (brief, p. 22); but the retail price in such small lots as five cents worth or even one dollar's worth of hay

was not shown, and could not be shown, as the court wi
readily perceive by referring to the testimony adduced o
behalf of the defendant. Of course, there is no such reta
business in the small lots referred to except in stables an
cattle yards. Had some witness engaged in the busines
of feeding cattle or other live stock been called, and it ha
been shown that he was qualified by knowledge, his test
mony might have been of aid; but none such testified.
man who buys at wholesale can readily sell by the to
at a profit of a dollar or two, provided he can sell i
bulk and does not have to deliver; but if he has to make fo
each ton 20 separate deliveries and feed 400 head of cattl
it would be unreasonable to expect him to sell a ton of ha
fo· even double the cost at wholesale for large lots. It
the universal experience in all businesses that the co
of labor greatly increases the retail price. The busines
of a stock-yards is essentially different from a feed sto
(pp. 120, 124, 141, 142). If, to repeat, the legislatio
gave the stock-yards 100 per cent., or 50 per cent., o
33⅓ per cent. clear profit on its feed, estimated fairly o
original cost and labor, an entirely different question woul
be presented. But it does not do so. It arbitrarily pr
scribes that no matter what the actual cost of th
hay and labor may be, and no matter what th
cost of the service of delivery and feeding, the charg
shall not exceed what other dealers not similarly situate
may sell for under essentially different conditions.

Three witnesses were called by Attorney-General Boyl
to prove the market value of feed; namely, Spellman, Fis
and Tyler (pp. 768, 770, 773). Spellman testified on cros
examination that there was no market price for such sma
lots as the stock-yards company sells, and that "each ma
makes his own price" (p. 77). Fish said that although h

would sell five cents' worth if requested, yet he "would not deliver such a small quantity as that," and that it would not pay "to send my wagon out with it" (pp. 772, 773). Tyler simply testified as a wholesale dealer, and not as a retailer, and the prices he quoted of $9 per ton for hay did not include delivery (p. 774).

Moreover, there is absolutely no compulsion about this feeding. There is no suggestion in the record that the feeding in cars is not just as convenient for those who object to the charges of the stock-yards company, and as humane to the live stock (pp. 397, 423); nor is there anything whatever to prevent any owner or his agent from driving his live stock outside the yards and feeding there and then returning to the yards (p. 423). There are plenty of stables in Kansas City. The reason why most of the live stock owners prefer to feed at the yards is undoubtedly because of the extremely reasonable charge per head of cattle, &c., made by the stock-yards company, and because they could not themselves or at any yard or stable in Kansas City obtain the same service for anything like the same low charge. Indeed, the testimony shows that the large buyers for the packing plants and others find it convenient and profitable to feed at the stock-yards until they need the live stock for slaughter or shipment.

The question of feed also presents a very serious question of constitutional law. Will the court extend the doctrine of *Munn* v. *Illinois*, 94 U. S. 113, so as to permit a legislature to discriminate among those engaged in the same business? The regulations in *Munn* v. *Illinois*, *Budd* v. *New York* and *Brass* v. *Stoeser*, applied to all alike. Can a legislature constitutionally regulate or limit the right of the owner of a stock-yards to sell hay and other feed and leave all other dealers free to obtain what they

may? Is this a legitimate classification? Is such a law as we are considering equal within the true meaning of the Fourteenth Amendment or of the requirement of the Kansas constitution that "all laws of a general nature shall have a uniform operation throughout the state"? Is it allowable that large dealers shall be regulated and all other dealers in the same commodity left free? If the court shall conclude, notwithstanding the admission of the Attorney-General, that it may in this case properly decide as to the nature and validity of this discriminating feature, then it is submitted that this part of the act must be declared unconstitutional, as a most objectionable piece of class legislation. But, in view of the statement of the Attorney-General that the act has no extra-territorial effect, it seems to counsel for the complainants unnecessary now to discuss this very interesting question further than will be found in the principal brief now on file.

The questions as to interstate commerce and as to how far this act may constitute a regulation of commerce are discussed in the principal brief on file. These questions are of far-reaching importance; and it were, perhaps, preferable that they should not be decided except after the most searching and discriminating investigation. The other issues in this record will consume all the time allotted under the rules for argument at the bar; and as the case can be decided on the merits upon the assumption that all the yardage and business were confined to Kansas, the question of interstate commerce may be reserved for some other case squarely presenting it for decision. Of course, if the court shall adopt this view, its opinion or mandate will so state in order that there be no possible prejudice to any interest.

CONCLUSION.

For the reasons set forth in the principal brief and in this reply, it is submitted that the act of March 3, 1897, of the legislature of Kansas should be declared void and of no effect on the ground that the rates prescribed are unreasonable and that the effect of the enactment would be to violate the rights of property protected by the Fourteenth Amendment, and the decree below should be reversed.

Washington, October Term, 1899.

WILLIAM D. GUTHRIE,
ALBERT H. HORTON,
B. P. WAGGENER,
Of counsel for appellants.

APPENDIX.

The tables of the master are not correct and fail to accurately summarize the testimony. The following may therefore be of aid to the court. It is carefully based upon the testimony in the record, and starts from 1884, when the new corporation was organized with a capital stock of $1,990,000 issued for property worth at least that amount. These figures as to profits are taken because they are testified to by the Attorney-General's own expert accountant (pp. 742, 745).

Year.	Capital stock issued.	Profits.	Cash dividends paid.	Percentage of dividend paid.	Stock issued at par for additional cash actually paid in since 1884.	Stock dividends representing undistributed net profits invested and capitalized.	Stock dividends representing increased value of lands.	Stock issued at par to Armour & Co. instead of $500,000 for packing plant.
1884...	$1,990,000.00	.....	$119,391.00	6				
1885...	1,990,000.00	.....	149,250.00	7				
1886...	1,990,000.00	.....	119,400.00	6				
1887...	1,990,000.00	.....	150,600.00	7½	$535,000.00	$456,993.00	$1,058,067.00	
1888...	4,040,000.00	.....	282,800.00	7				
1889...	4,040,000.00	.....	323,200.00	8				
1890...	4,040,000.00	.....	323,200.00	8	9,000.00	404,000.00		
1891...	4,444,900.00	.....	311,143.00	7				
1892...	4,444,900.00	.....	370,592.00	8				
1893...	4,944,900.00	.....	296,694.00	6	55,100.00	.....	.....	$500,000.00
1894...	5,000,000.00	.....	451,133.50	9	1,667,100.00	268,100.00		
1895...	6,935,200.00	.....	554,816.00	8	.....	.....		
1896...	7,368,650.00	$486,227.15*	429,162.50	6	.....	433,450.00		
Total	.....	.....	$3,881,380.00	.....	$2,266,200.00	$1,562,543.00	$1,058,067.00	$500,000.00

* After deducting improvements, $69,584.65.

C. D. PARKER (p. 629 *et seq.*):

"Q. (p. 632). In placing the valuations on these tracts A, B, C, D, and E did you take into consideration the use to which this land is being put by the stockyards company?

A. No, sir; we took into consideration the prices of property adjacent to the stockyards, together with the surroundings.

Q. (p. 633). Where else in that vicinity could they find any such a body of land?

A. There is no such property, except west of the stockyards, that is available right near that point for such purposes. * *

Q. Suppose they went in there to condemn 25 acres and you sat on the jury—

A. It would not be practicable; it could not be done.

Q. (p. 634). They could not buy it for any price that would be within reason, could they?

A. No, sir.

Q. (p. 636). And if another stockyards company should come in, do you think it could procure as desirable a location in the bottoms?

A. I don't think it could.

Q. That being the case, Mr. Parker, am I right in concluding that in your judgment the present location of the Kansas City stockyards is peculiarly well adapted for their purposes?

A. With the surroundings; yes, sir.

Q. (p. 645). Now, state, if you can, what is the actual present value of the land for stockyards purposes.

A. I don't know, Mr. Hite."

E. F. ALLEN (pp. 657 *et seq.*):

"Q. (p. 666). In making your estimate of values you were not influenced by the value of the use to which the lands were being put by the company?

A. No, sir.

Q. Not at all

A. No, sir.

Q. (p. 670). Now, assume that the Kansas City Stock Yards people have been prosperous, would you say, Mr. Allen, that their proximity to the packing-houses and their proximity to the railroad terminals was an element of their prosperity?

A. Oh, yes; that enters into it.

Q. Is that such an element of prosperity as would be destroyed by the removal of the yards two miles from thei present location? I will not — destroyed, but impaired.

A. It would greatly impair it, I should judge.

Q. The fact is, to get the idea clearly, that the present location of the stockyards, everything considered, is one of the best that they could have?

A. Very attractive location, I would judge; of course, I am not familiar with their business.

Q. In a general way, that is true?

A. Yes, sir.

Q. Considering all the questions that you have been asked and the answers that you have made, what, in your opinion, is the value of this property that you valued to the stockyards company?

A. I don't know."

R. E. CABLE (pp. 678 *et seq.*):

"Q. (p. 683). What, in your opinion, is that tract E worth just as it stands today?

A. For general purposes or the purposes for which it is being used?

Q. For the purposes for which it is being used.

A. Certainly I could not answer that question.

Q. You do not know?

A. No, sir.

Q. I call your attention to the tract B. What is that worth as it stands there today for the purposes for which it is being used?

A. To the stockyards company?

Q. Yes.

BY MR. BOYLE: With all the improvements on it?

BY MR. HITE: Yes, sir; just as it stands today.

A. I certainly don't know.

Q. (p. 689). What do you mean by general purposes?

A. For drug stores, groceries, saloons, or any other business or for residences; any business you choose to consider.

Q. Wouldn't it be worth the prices we have been considering for packing-house purposes?

A. I couldn't answer.

Q. Wouldn't it be worth that for railroad purposes?

A. That I don't know.

Q. (p. 690). Do you know what the value of the stock-yards property is today as it stands?

A. The land, you mean?

Q. (p. 691). The real estate belonging to the stockyards company, just as it stands today.

A. No, sir; I have got my judgment on the value of the lands of the company. You mean the improvements, also?

Q. Just as I stated; just as you look at it today; do you know what is the value?

A. I don't; and no person living except the stockyards people can answer that question.

Q. Would they know?

A. Yes; what it was worth to them.

Q. Wouldn't they know better than anybody else what it was worth?

Objection as improper cross-examination. Objection sustained.

Q. Then, as I understand you, the value which you have put upon this property is the value it would possess if it were a farm located down there in the bottoms?

A. Certainly."

C. W. WHITEHEAD (pp. 692 *et seq.*):

"Q. (p. 696). What is this property marked A, B, C, D, and E worth for stock-yards purposes?

A. I don't know.

Q. What is the value of this property for railroad purposes?

A. I don't know.

Q. What is the value of this property for packing-house purposes?

A. I don't know anything about the packing-house business. * *

Q. What would be the value of that property for packing-house purposes?

A. I have stated, I believe, that I don't know.

Q. (p. 697). These pieces of land concerning which you have testified are valuable for stock-yards purposes, are they not?

A. Yes, sir.

Q. Is it not a fact, Mr. Whitehead, that they are more valuable for stock-yards purposes than for any other purpose?

A. They are at present; yes, sir.

Q. (p. 699). I am excluding from consideration that period. In placing the values which you have given upon these tracts of land, Mr. Whitehead, you have excluded entirely, have you not, the use to which that land is being put at the present time?

A. In arriving at our values we tried to get the values of the property that was not affected by any railroad extension or stock-yards extension.

Q. You excluded both?

A. Yes, sir."

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Supreme Court of the United States.

OCTOBER TERM, 1900.

Filed Jan. 11, 1901.

No. 7.

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vs.
A. GODARD, Attorney-General of the State of Kansas, and the KANSAS CITY STOCK-YARDS COMPANY ET AL.
Consolidated suit.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

BRIEF FOR APPELLANTS ON REARGUMENT.

ALBERT H. HORTON,
WILLIAM D. GUTHRIE,
B. P. WAGGENER,
Of counsel for appellants.

WASHINGTON, January, 1901.

[16,789.]

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STATEMENT OF FACTS.

The present subject of inquiry is as to the validity, under the Fourteenth Article of Amendment to the Constitution of the United States, of an act of the legislature of the state of Kansas (approved March 3, 1897; record, pp. 41–42) prescribing maximum rates to be charged by certain stock-yards within the state. The effect of the statute is to reduce the customary charges of the defendant, the Kansas City Stock-Yards Company, from 25 cents per head for cattle to 15 cents, from 10 cents for calves to 8 cents, from 8 cents for hogs to 6 cents, and from 5 cents for sheep to 4 cents. The annual income of the company would be reduced $300,651.77, the equivalent of a reduction in net income of 63 per cent. according to the contention of the appellants or the equivalent of a reduction of 28 per cent. according to the contention of the Attorney-General of Kansas. The owners of the stock-yards contend

that the act arbitrarily deprives them of property without due process of law and denies to them the equal protection of the laws by reducing the charges to an unreasonable rate and by preventing them from collecting the fair value of the service they render to the class of the public using the yards for its individual convenience and pecuniary profit.

The property of the Kansas City Stock-Yards Company, which was established in 1871 and is located partly in Kansas City, Kansas, and partly in Kansas City, Missouri, is indisputably of immense value, whether we consider the amount of money actually invested or the value to which the property has appreciated by reason of the marvelous growth of Kansas City and the great increase of all values there. The master reports the value of the real estate used for stock-yards purposes at $3,600,626, the value of the buildings, etc., at $1,480,000 and the value of the personal property used in the business at $307,377.25, making a total valuation of $5,388,003.25 (p. 77), after excluding $1,200,000 of other property (p. 76), and these valuations, it is insisted by the appellants, are insufficient and unfair.

The act in question provides that stock-yards which have had "for the preceding twelve months . . . an average daily receipt of not less than one hundred head of cattle, or three hundred head of hogs, or three hundred head of sheep, are hereby declared to be public stock-yards," and "any person, company or corporation owning or operating any public stock-yard or stock-yards in this State is hereby declared to be a public stock-yards operator, whether living or being within this State or not" (p. 41). It is then provided, among other things, that the maximum charge of owners of such stock-yards within the state for "driving, yarding, watering and weighing of stock" shall

not be greater than 15 cents per head for cattle, 8 cents per head for calves, 6 cents per head for hogs, and 4 cents per head for sheep, and that but one charge shall be made for all these services. The act also provides that it shall be unlawful for the owners of *any such* stock-yards to sell hay at the rate of less than 2,000 pounds for a ton or any part thereof, or "to charge for or to sell the same at more than one hundred per cent. above the average market price or value of such hay upon the markets of the towns or cities wherein such stock-yards are located, upon the day preceding such sale and delivery," or to deliver less than 70 pounds of corn in the ear for a bushel, or less than 56 pounds of shelled corn for a bushel, or to "charge for . . . or sell the same at more than one hundred per cent. above the average market price or value of such ear corn or shelled corn on the markets of the towns or cities wherein said stock-yards are located, on the day next preceding such sale and delivery." The act also provides that all other feed not specifically mentioned in the act shall not be sold for a greater percentage of profit than therein provided. Any person violating the act is to be deemed guilty of a misdemeanor, and, upon conviction, is to pay a fine for the first offense of not more than $100, for the second offense of not less than $100 nor more than $200, for the third offense of not less than $200 nor more than $500 and is to be imprisoned in the county jail not exceeding six months for each offense, and for each subsequent offense is to pay a fine of not less than $1,000 and is to be imprisoned in the county jail for not less than six months. The act expressly provides that it shall be the duty of the Attorney-General to prosecute all violations of its provisions.

Shortly after the act went into effect, and on March 13, 1897 (record, pp. 1-20), the plaintiff Cotting, a stockholder in the Kansas City Stock-Yards Company, filed a bill against the company and its officers and Louis C. Boyle, then Attorney-General of the state of Kansas, to restrain the officers of the company from complying with the act and the Attorney-General from enforcing its provisions on the ground that such compliance or enforcement would deprive the company of its property without due process of law, etc. After the filing of the bill in the Cotting suit, a substantially similar bill was filed by another stockholder named Higginson on March 26, 1897 (pp. 23–42). The second suit related to the same subject matter and sought the same relief, and the suits were therefore consolidated (pp. 50–51). The officers of the company had expressed their intention to comply with the act because of its severe penalties, which would have involved them in the risk of personal ruin if they had violated the act for one day, even for the purpose of having judicial proceedings brought to test its validity. The stringent provisions of the act, making criminal what had not been so before and involving the risk of fabulous sums in penalties (for the daily receipts average about fifteen thousand head, p. 94), so acted *in terrorem* that the officers dared not violate them, and the parties in interest were left practically remediless except by an appeal on the part of stockholders to a court of equity to protect their property rights. The controversy not only arose under the Constitution of the United States, but there was in addition a diversity of citizenship and the fullest compliance with equity rule No. 94 (record, pp. 13-15, 19, 34-36, 39-40). The bills of complaint were in all respects within the doctrine of *Dodge* v. *Woolsey*, 18 How. 331, 341; *Pollock* v. *Farmers'*

Loan & Trust Co., 157 U. S. 429, 553, and *Smyth* v. *Ames*, 169 U. S. 466, 517.

As soon as the original bill of complaint was filed, an application was made for a preliminary restraining order including a direction to show cause, which was granted. Upon the return of this order, Foster, D.J., appointed a special master to take testimony and report to the court (record, pp. 43–44, 50–54), and in the meantime continued the restraining order in force. An immense amount of testimony was taken by both sides before the master during the course of what may be termed an unusually bitter adversary contest, and this testimony and the master's report thereon (pp. 57 *et seq.*), together with the final decree, are now before this court for consideration and review.

The Attorney-General of Kansas appeared generally in the suit, and the jurisdiction of the federal court was "not seriously challenged" (79 Fed. Rep., 679, 681) on the ground that the state was being sued in violation of the Eleventh Amendment until all the testimony had been taken at great expense and the litigation had been pending over seven months (p. 906). In the third ground of the demurrer originally filed but not printed in this record, the only plea of the Attorney-General on this point was that—

> "This defendant has no personal interest whatever in said controversy other than such as pertains to every citizen of said State of Kansas, and said State of Kansas is not made a party to said suit."

There was no plea to the jurisdiction. It was not until after all the testimony had been taken and the motion for a preliminary injunction had been denied by Foster, D. J., (record, p. 874), that the Attorney-General filed an answer and then for the first time

pleaded the Eleventh Amendment; but the point was not pressed or argued. Thereafter, Attorney-General Boyle expressly stipulated that the suit was not collusive as between the complainants and the defendant company (pp. 874, 875), and was quite satisfied to have the case submitted for final hearing on the merits, evidently in view of the fact that for several months he had conducted the examination and cross-examination of witnesses and every aspect of the controversy had been thoroughly litigated. Under these circumstances, it is submitted that the objection to the jurisdiction was waived. *Clark* v. *Barnard*, 108 U. S. 436, 447; *Brown* v. *Lake Superior Iron Co.*, 134 U. S. 530, 535; *Coburn* v. *Cedar Valley Land Co.*, 138 U. S. 196, 222. The only rule consistent with the due and orderly administration of justice in the federal courts must be that when an officer of a state is sued and intends to avail of the point that the judicial power of the courts of the United States does not extend to the suit, because virtually a suit against the state, he should at once challenge the power of the court to proceed further by a plea or demurrer to the jurisdiction, and cannot be permitted to play fast and loose with the situation, and proceed with the reservation that, if he is defeated on the merits, he may still insist upon want of jurisdiction (See *Hartog* v. *Memory*, 116 U. S. 588, 590; *Fitts* v. *McGhee*, 172 U. S. 516, 518, 524).

After the denial of the motion for a preliminary injunction by Foster, D. J., (record, p. 874), the Attorney-General filed an answer in each suit (record, pp. 877–906, 907–936); the consolidated suits were thereupon submitted for final hearing upon the pleadings, the testimony and exhibits and the master's report before Thayer, C. J., and Foster, D. J., and a final decree was entered dismissing the bills

of complaint with costs, but providing that the existing status as to the customary charges should be continued, pending an appeal to this court upon giving a bond in the penal sum of $200,000 to refund all overcharges for yarding and feeding live stock in Kansas or Missouri, in addition to the bond for $75,000 previously given (record, pp. 947, 948).

In dismissing the bill of complaint, the circuit court said, among other things (p. 945):

> "Conceding, as we must, that the legislation complained of was radical in its nature and effect, that it reduced the company's income about fifty per cent., and that it prevents it from realizing on the capital invested in its plant such a per cent. as is ordinarily realized on capital invested in other mercantile and business enterprises, still the court is not prepared to hold that the statute is confiscatory, and that it deprives the company of its property without due process of law. It is common knowledge that large sums of money are invested in securities which do not yield a return exceeding five per cent. on the investment, and it is further manifest that the business of the stock yards company as conducted is not subject to the same risks of loss from bad debts and declining prices which affect many other business enterprises."

In taking the testimony, both sides, for convenience, adopted the year 1896 as showing a fair average of business conditions, and the proofs, estimates and calculations were confined to the business conditions existing during that year.

In order to lessen the labor of the appellate court by avoiding, so far as possible, points of dispute as to the testimony, it may be conceded that the master's report (record, pp. 57–80) is substantially correct except as to the features of value and net earnings or profits, and except that in certain respects the facts found tell but half the

truth and tend to create erroneous impressions by omitting relevant facts. The findings which are challenged are numbers 16, 20, 34, 38, 40, 41, 43, 46 and 48 (pp. 64, 71–72, 74–80). The following statement of the facts which will supplement the master's findings is in more or less argumentative form, but as this will avoid unnecessary repetition, it is hoped that such a presentation may be excusable on a reargument. The facts which will require the most particular attention on the part of the court are (1) as to the discriminating features of the act, (2) as to the reasonable value of the services rendered, (3) as to the effect of the statute on the net earnings or profits, and (4) as to the basis of valuation of the property. It will be observed that the act in question does not purport to be a regulation of corporations as such but applies to individuals provided they come within the definition of "public stock-yards operators."

The Kansas City Stock-Yards Company is essentially a private corporation exercising no greater rights than individuals or partnerships. It has no special franchise, no privilege, and no legal or practical monopoly of any kind. It was organized in 1871 and reorganized in 1884 as a private business corporation under the Kansas statutes which then authorized and now authorize by general act any five persons to incorporate for any lawful purpose (Const. Kansas Art. 12; chap. 23, vol. 1, Gen. Stat. 1889, pp. 367–371; chap. 66, vol. 1, Gen. Stat. 1897, pp. 688–692). The company is engaged in an intensely competitive business with stock-yards located at Omaha, St. Joseph, St. Louis and Chicago. Similar yards may be started alongside in Kansas City or elsewhere at any time. The owners of live-stock are not compelled to use the Kansas City stock-yards as matter of necessity. Other yards can

be selected by the shipper, and nearly one-half of the shipments are consigned to other yards with privilege of sale at Kansas City. The proof shows that the business has been built up and sustained by advertising and the employment of solicitors constantly soliciting the shipment of cattle to the Kansas City yards (p. 195). The yards have no practical monopoly from their situation. This fact was conceded, for the contention of the defense below, throughout the taking of the testimony, was that other and cheaper lands were available for stock-yards purposes, and so the answer practically alleged (p. 880). The establishment of other stock-yards in the vicinity might ruin the business, and would certainly divide the custom and greatly reduce the income. The removal of the packing plants now situated on property adjacent to the present yards would at once destroy the market and deprive it of most, if not all, its custom. The stock-yards company exercises no power of eminent domain, and must pay for the property it uses or needs whatever price the private owner may exact. The proof shows that it was frequently compelled to pay more for much of its property than if it had been able to exercise the power to condemn. To use the expression of some of the witnesses, the absence of the power of eminent domain enabled property owners, in certain instances, to "hold up" the company in the purchase of necessary land (pp. 206, 234, 308, 494, 551), and compelled it to pay much more than the master allowed as the value of the property. Indeed, this feature, which in all fairness should have created an equity in favor of the stock-yards company, to be allowed more than the bare market value of the lands, and should have emphasized the reason why it ought not to be subject to legislative control to the same extent as a corporation exercising the great power

and advantage of eminent domain, was turned against it and pressed as a reason why the high prices paid by it should not be considered (see answer at p. 880). Thus, lands which actually cost over $60,000 an acre were reported by the master as worth only $45,000 an acre, and 22.858 acres which were purchased in 1895 at an actual cost of $1,289,239.73, or an average of $56,401.72 per acre, were likewise reported as worth only $45,000 per acre, or $1,028,610, although it appeared that the stock-yards company was even then unsuccessfully endeavoring to purchase adjoining property at $70,000 an acre (pp. 191, 232-233, 239–240). As matter of fact, the average cost of eleven acres (reported as worth only $45,000 per acre), was $88,097 per acre (pp. 191, 232–3).

The stockholders of the stock-yards company hazarded their capital upon a doubtful and uncertain industrial speculation (pp. 354, 442, 458, 459) and they have succeeded solely through the energy and capacity of the managers and the investment and risk of a large capital. The venture, it is true, has turned out to be successful. The owners of the stock-yards have built up an industry and a market where there is now transacted more than thirty times the amount of business done in 1871. They have created a great market where previously there was nothing but a feeding yard (pp. 93, 127, 184), and their efforts have resulted in establishing a valuable and remunerative business, which has steadily grown, with the development of the surrounding territory, to the "present magnificent proportions" reported by the master (p. 60). During the period of twenty-seven years covering the almost unprecedented growth of the city and the wonderful development of the market, the real property of the company, most of which was purchased from 1871 to 1879, has greatly increased in value. When the stock-yards were

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established, the land taken for that purpose was wild, covered with trees and surrounded by prairie or sand banks (pp. 93, 127), and there was no market (p. 185). These lands are now in the centre of the industrial business portion of a great city; they are surrounded by a vast system of railroad tracks and terminals, and immense packing and industrial concerns are situated immediately and conveniently adjacent.

But in considering the advantages which have accrued to the stock-yards company from the conditions now existing at Kansas City, it must not be forgotten that the company was itself largely instrumental in creating those conditions. For instance, it spent large sums of money in subsidizing packing plants, and thus procured their establishment at Kansas City instead of elsewhere; and these packing plants created the market to which in great degree Kansas City owes its prosperity. We thus find that while the business of the company has been profitable to its owners, the benefits to Kansas City and to the state of Kansas have been immeasurable. The striking manner in which the city and the stock-yards have grown together will be shown by a few well-known statistics.

Kansas City was but a small village when the Union Pacific Railroad Company reached it in 1865. At the time the census of 1870 was taken, there was no such town as Kansas City, Kansas, to which to assign any population or property value. Indeed, in 1880, its population was only 3,200, which increased to 38,316 in 1890, to 41,150 in 1897, and to 45,000 in 1898, an increase of over 1,400 per cent. since the stock-yards were established. The assessed valuation of the real property in the whole county of Wyandotte, Kansas, which was $1,612,342 in 1870, had increased to $10,895,371 in 1890.

The products of all the industries in Wyandotte county, which in 1870 amounted to $755,051, were $58,132,679 in 1890. The value of the meat-packing product, which in 1870 was absolutely *nothing*, had in 1890 already reached $39,927,192. The number of head of live stock yarded in 1871 was 167,199, of the value of $4,210,605, and in 1896 the number of head yarded was 5,471,246, of the total value of $103,402,298, an increase in number of 3,300 per cent. and an increase in value of 2,500 per cent. So also as to Kansas City, Missouri. The population, which in 1870 was 32,260, had become 132,716 in 1890, and was 160,000 in 1897 and 175,000 in 1898. The assessed valuation of the real and personal estate in the whole of Jackson county, Missouri, which in 1870 was $16,103,332, had increased to $95,932,877 in 1890. The bank clearings of Kansas City which were only $20,407,967 in 1875, were $540,837,381 in 1897. The evidence also shows marvelous increases in values of land. Conspicuous instances were cited of property worth $1,000 to $2,000 per front foot (p. 488), and one witness testified that land which he could have bought for $75 an acre twenty years ago was now worth $1,000 a front foot (p. 562), which would be the equivalent of $250,000 per acre, or an increase of over 3,000 times the value twenty years ago. It is, therefore, not astonishing that the Attorney-General of Kansas should have stated on the original argument that "we recognize the fact that this property has greatly increased in value since the organization of the stock-yards" (brief on original argument, p. 77).

We may now proceed to group the facts under the principal heads suggested by the issues, namely, (1) as to the value in themselves of the services rendered (pp. 13–22); (2) as to the effect of the statute on the earnings of

the stock-yards company (pp. 22–32); (3) as to the value of the property and the capital invested (pp. 32–41); (4) as to the stock dividends (pp. 41–46), and (5) as to the feed charges (pp. 46–51).

I.

As to the value in themselves of the services rendered.

In considering the value in themselves of the "driving, yarding, watering, and weighing" services rendered to the owner of live stock using the yards for his convenience and profit, the first feature that stands out prominently in the record is that the yardage and attendance are free unless the live stock is actually sold at a price satisfactory to the shipper. The owner of cattle, etc., has the privilege of using the yards as long as he pleases without any charge whatever unless he finds a buyer at a price satisfactory to himself, and no matter how many sales there may be of the same live stock, only one charge is made (p. 403). Nearly one-half of the live stock is consigned to Chicago or other yards, with privilege of sale in Kansas City (pp. 69, 152, 165), for the very purpose of being sent elsewhere if the owners are not satisfied with the price obtainable. There is, therefore, free use of the yards and no compulsion as to the payment of yardage. The stock-yards company practically guarantees a better market than elsewhere; and unless it continues to maintain its market, so that the prices are better than in other yards, fully one-half of the shipments will be at once diverted to Chicago or other points, and the business turned at once from a profit to a loss. The owner of live stock is also entitled to keep his cattle in the yards without extra charge, until he finds a satisfactory market, even if this should take a year (p. 403). For this reason and for others shown in the testimony (pp. 359, 360, 363, 364–367, 405), the

company must provide accommodations for the maximum possible requirements, and if the market—that is, the buyers—fail them, it will lose not merely the profit, *but the cost of operation and maintenance.* This consideration of free driving, yarding, watering, etc., was given no weight below; yet it surely bears upon the question as to the value of the service rendered by these yards to the owners of live stock and upon the claim that the customary charges are reasonable.

The second prominent feature in connection with this branch of the case is that the yards are kept in better condition and have more facilities than the yards at other points, and that the owner of live stock consequently obtains better prices than elsewhere (pp. 74, 123). These better prices are undoubtedly the result of the greater facilities and accommodation furnished and of the expenditures made by the company in inducing packing plants to locate in the immediate vicinity of the yards, and of the soliciting referred to above (p. 195). It appeared and the master found that during the test year selected by consent—namely, 1896—the owners of live-stock realized more than $1,500,000 in excess of the prices they would have obtained if the live-stock had been forwarded to Chicago (pp. 74, 123); that is to say, *they realized, in excess of the prices obtainable elsewhere, enough to pay for all yardage and feed collected by the Kansas City company, and over $600,000 besides!*

The mere furnishing of yardage and pens and free use of railroad tracks and railroad terminal facilities (pp. 292, 392) and of an immensely valuable plant is a small part of the services rendered. The legislature so understood and intended to reach and regulate not only yardage but "driving" and "watering" and "weighing." The cattle

are received by the stock-yards employees from the railways at the shutes, and the responsibility of the stock-yards company begins from that time and continues until delivery to the buyer. These employees drive the stock to the pens, which may be selected by the owner; and one carload may be distributed into twenty pens, if the owner so desires, in order to exhibit his shipment advantageously. The live stock is fed and watered by stock-yards employees. The next step is to weigh each lot of stock and record the weights. The live stock is then delivered either to the packing houses or to the railroads according to the lots sold. The stock-yards company is compelled to have constantly on hand a large force of men (some 346, pp. 359, 367, 370), many of whom are highly skilled in the business. The company is not only liable for accidents, but it practically guarantees all the records and weights, and assumes responsibility for deliveries, etc. Indeed, everything that an owner of live stock would at any ordinary market have to do for himself is done for him by the clerks and yardmen of the company, so as to facilitate prompt and satisfactory sales. The detail of the business may be imagined from the example testified to by one of the witnesses, who showed an instance of the making of twenty-one separate entries, receipts, notices or documents as necessary in connection with the yardage of one lot of cattle. The skill, ability,energy and fitness of the employees for the performance of these services is reported by the master (p. 74). In addition to the services already mentioned, the company maintains a sheep dip for the use of shippers. This plant is owned by the stock-yards company, and is furnished free to parties who are required by law to dip their sheep (p. 134). The company also main-

tains quarantine yards, which it operates under the orders and directions of the Department of Agriculture and without additional charge to the shipper. The testimony shows that these yards put the company to considerable expense of a different character from that of the main yards. It has to maintain a separate force for handling the stock received at the quarantine yards, and these yards have to be disinfected and cared for under the instructions of a government inspector (pp. 361–362, 381, 407, 414, 420, 603–604). And for all these services rendered and benefits conferred, the cattle owner pays twenty-five cents per head of cattle as against an average selling price of forty dollars per head (p. 147); in other words, about one-half of one per cent. of the price actually realized, and then only in case of satisfactory sale (record, pp. 64, 104, 108, 109, 119, 120, 132, 134, 147, 148, 151, 157–160, 162, 249, 359, 362–365, 371, 372, 383, 384, 393, 402, 405, 419, 421, 426, 427, 428, 464–469, 472).

The Kansas City Stock-Yards Company has for many years made the same charge for yardage, weighing, feeding, watering and other services as has been usual in all other stock-yards; and between the yards at Kansas City and those at other points "there is and was for a long time prior to March 12, 1897, active and growing competition among their owners to attract and secure to each the shipment of live stock from competitive territories" (pp. 64, 74, 326, 457, 467, 472). The charges are nowhere less than at Kansas City (p. 797). The master found that the customary charges collected for many years at the Kansas City stock-yards are identical with those at twelve other stock-yards, and that the customary charges for feeding, etc., were either identical with or less than those of other yards (pp. 64, 65). There is no agreement

among the stock-yards companies to maintain these rates, and they have existed for a quarter of a century at the other yards (p. 458). It appeared that the stock-yards company prior to 1891 (p. 128) had charged twenty cents per head of cattle, or five cents less than the customary charge at other yards (p. 64). The managers found that the lower charge was doing no particular good, and they deemed it wiser to increase the rate to the customary charge and expend the additional income in adding to the facilities and accommodations at the Kansas City yards (pp. 143, 151, 398, 400, 401). In any aspect, however, the fact that four years before the act in question the stock-yards company had charged twenty cents, or five cents less than the customary rate, cannot tend to establish that *fifteen* cents is reasonable. Since 1894 nearly $700,000 have been spent for improvements on the property (pp. 337–339), and the service is better (pp. 400–401). It must be evident that, if the customary charges had been or or were excessive, the force of competition would have led to a reduction. The reason why the competition has not produced any reduction is that the charge in itself is low, and that it is infinitely more important to increase the facilities and accommodations and to create a constant demand and stable market (pp. 402, 441). The charge is so small and reasonable that in itself it would not affect the market. The facilities for trade, the constant demand, the proximity of packing houses, the soliciting and advertising, the accommodations furnished, the presence of buyers—these are the features that make a market, and not the yardage charge. If the stock-yards company must now reverse its policy, cease making improvements and developing its business, the market will, in a very few years, go back to Chicago and other yards. It is in truth

no exaggeration to assert that, if the company made absolutely no charge for yardage, the market, far from increasing, would, in fact, be destroyed if the facilities and accommodations now furnished were curtailed, the solicitors withdrawn, and the packing plants which the stock-yards company helped to establish were removed.

In addition to the proof that at all the large stock-yards of the country the customary charges were substantially the same as at Kansas City, the complainants called two competent expert witnesses, who had been for many years connected with other stock-yards, the one witness, Palmer (p. 450), being the general manager of the St. Louis stock-yards, and the other witness, Babcock (p. 466), being the general manager of the Omaha stock-yards, and both these witnesses testified that the customary charges were fair and reasonable (pp. 465, 472). The manager of the Kansas City yards further testified that they could not charge less and keep up the quality of the service (p. 151).

Upon this question of reasonableness of the rates, the Attorney-General called only two witnesses, Peck and Jaquins (p. 787, 792). Jaquins was a member of the legislature which passed the act in question and had served as chairman of the Live Stock Committee which formulated the act (pp. 792, 796). Such a witness was obviously not disinterested, nor was he a fit *judge* upon the reasonableness of the charges embodied in the act which he himself had helped to pass and had probably drafted. An examination of Jaquins' testimony will show that he was quite prejudiced, and, besides, utterly incompetent upon the question of the reasonableness of the customary or of the statutory charges. He testified that he did not know anything about the service rendered at the

Kansas City yards since 1894 (p. 794), that no cattle shipper could get the same service for less money in any other big market (p. 797), and that the last time he had sold any cattle at the Kansas City market was " two years ago last fall " (p. 798).

Now all that this witness could testify to upon the point of reasonableness—and this is the only testimony in the whole case which the Attorney-General was able to produce upon this vital point—was as follows (pp. 794–795):

> "Q. (By Attorney-General Boyle). Are you familiar with the provisions of the act of the legislature approved March 3, 1897, which is an act defining what shall constitute public stock-yards, defining the duties of the person or persons operating the same and regulating all charges thereof, and removing restrictions in the trade of dead animals, and prescribing penalties for the violations of this act?
>
> A. Yes, sir.
>
> Q. I wish you would state whether or not, in your judgment, the charges therein provided for are reasonable and fair. . . .
>
> A. Yes, sir; my judgment is that they can make money under those charges.
>
> Q. I will ask you, if in your opinion, the charges are reasonable and fair to the stock-yards company?
>
> A. Yes, sir."

The only ground which he could assign for concluding that the charge was unreasonable was the following (pp. 797, 798):

> "Q. I understand you think the charges of the company are unreasonable?
>
> A. Yes, sir.
>
> Q. What makes you think so?
>
> A. I think they are making more out of their business than any other class of people.
>
> Q. Is that the reason you think they are unreasonable?
>
> A. Yes; *I think that things ought to be sort of equal in their profits.*

Q. You don't know of any place where cattle can get the same service for less money?

A. Not in a large market like that; but I think they have all pooled on that figure, and they won't take less than a certain price. That is my judgment about it.

Q. Do you know whether they have pooled or not?

A. Nothing positive; no.

Q. I mean of your own knowledge?

A. No."

He further testified as follows (p. 802):

"Q. In the case you have taken, you do not consider the value of the market there?

A. Nothing at all.

Q. Nothing about the cost of the yards?

A. No, sir.

Q. Nothing about the cost of their structures?

A. No, sir."

In regard to the Wichita market, Jaquins testified as follows (p. 798):

"Q. Do you know about the Wichita market?

A. Yes, sir; the Wichita market has never yet got centralized with packers enough to make a market; besides, they have labored under great difficulties with the railroad companies; they can't get any cut rates down there in that country like they seem to have on the Missouri river; besides they have only two packing-houses, and they are very small."

Peck, the other witness called upon this point, lives at Jamestown, and has a yard there (p. 788). He feeds his cattle on the cars, and seemed to have the idea that the charges of the Kansas City yards were not satisfactory to him. A sample of his testimony will be interesting. Thus, at pp. 790–791:

"Q. Why do you send your hogs to Kansas City?

A. Send them there to the market.

Q. Why not to Chicago?

A. It is too far.

Q. Did you ever send any hogs to Chicago? Did you ever fail to sell any hogs you sent to KansasCity?

A. No, sir.

Q. What do you think about the market in Kansas City for hogs?

A. I think it is a very good market.

Q. Do you know of any market in this country that is as good for hogs?

A. I don't know as I know of any better.

Q. How much do they charge you for yardage on hogs?

A. Eight cents a head.

Q. You think that is too much?

A. I think it is rather high, yes.

Q. Why do you think so, Mr. Peck?

A. I think so because a person could do it for less money and make good wages.

Q. Do you know any place in this country where you can get it for less money?

A. No, sir.

Q. Why do you think it can be done for less money?

A. I could do it for less money if I had a chance to do it.

Q. You think you could give shippers a market for their hogs?

A. I think *I could if the packing-houses would come out to my yards.*

Q. Wouldn't you want something more than packing-houses?

A. I think that would be enough.

Q. Wouldn't you want buyers?

A. I think the buyers would come.

Q. So you think if the packers and buyers would move out around your yards at Jamestown, you could give them your yards, and furnish yardage at less than eight cents?

A. Yes, sir.

Q. Did you ever run stock-yards?

A. No, sir.

Q. Do you know what it costs to run the Kansas City stock-yards?

A. No, sir."

It is difficult to treat such testimony seriously or patiently. In view of the absolute want of any competent evidence whatever on the part of the Attorney-

General in regard to the value in themselves of the services rendered and the reasonableness of the statutory charges, the testimony adduced on behalf of the complainants as to the customary charges at other yards and their fairness and reasonableness should, according to all ideas of due proof in a court of law, be conclusive, if the question of reasonableness in these rate cases is to remain a matter for judicial determination.

2.

As to the effect of the statute on the earnings of the stock-yards company.

The year 1896 was taken by consent as above explained, because it presented fair average conditions upon which to test the operation of the statutory schedule. During that year, the gross receipts for yardage at the customary rates were $665,658.05, and for feed, &c., $224,690.88, so that the total gross receipts for the services regulated by the act of March 3, 1897, amounted in 1896 to $890,348.93 (p. 72). If, however, the statutory rates had prevailed instead of the customary charges, the gross receipts for yardage, etc., would have been reduced to $441,180.48, and for feed, &c., $148,516.68, so that the total gross receipts would have been $589,697.16, a reduction of $300,651.77, or more than one-third (pp. 72, 73). That this is the extent of the reduction is conceded. The Attorney-General of Kansas stated in his brief on the original hearing in this court that (p. 54): "The master found, and it is conceded, that the application of the Kansas statute to the business of 1896 would have reduced the gross income $300,651.77." The effect on the net income would have been equally radical. The net earnings in 1896 applicable to dividends were at the customary rates, $476,974.08 (p. 71), assuming that the items in finding

33⅓ were properly chargeable to earnings. The net earnings under the statutory rates would have been $176,322.31, a reduction of $300,651.77 (p. 73), or 63 per cent.

To state the result in different terms, the gross receipts of the business affected by this legislation at the existing customary rates in 1896 were, as we have just seen, $890,348.93 (p. 72); the minimum cost of operation without allowance for renewals or repairs was 35 per cent. (pp. 199, 235, 240), or $311,622.13, leaving net $578,726.80. If we allow ten per cent. of the cost of the plant (p. 350) for repairs, renewals and depreciation, or $159,303, the net would be $419,423.80, and if we deduct the statutory reduction of $300,651.77, we shall have left only $118,772.03.

The Attorney-General of Kansas, however, contends that certain items, amounting in the aggregate to $169,584.65, and representing expenditures for betterments, improvements and extensions, should not have been paid out of profits, but should have been capitalized, or, as alleged in the answer, (p. 884) "it would be proper to issue additional stock if necessary to raise funds for the purpose." These improvements, betterments and extensions were mostly in renewal of existing facilities in the old yards (pp. 338, 340), or were made in order to better accommodate the business of the yards, but it appeared by uncontradicted testimony that they did not tend to increase the income or earning capacity of the company (pp. 240, 317).

A full description of these improvements and betterments will be found in a stipulation which the parties entered into "for the purpose of removing any question which may exist in regard to the manner in which the

earnings of the stock-yards company were disbursed during the years 1892, 1893, 1894, 1895 and 1896 for operation, maintenance, and extensions of improvements" (p. 82). The items of 1896 consisted of actual cash expenditures for rebuilding or replacing parts of the existing plant, completing buildings, laying brick pavement instead of plank flooring which had worn out, etc. (pp. 89–91). There has heretofore been no suggestion that this construction was not absolutely necessary, or was not paid out of earnings. In fact, the master reported that "the affairs of said company have, from the standpoint of the stockholders therein, been wisely, efficiently and economically administered, and its operating expenses and *cost of maintenance have been necessary* to properly transact its business and successfully carry out the purposes for which it was incorporated" (p. 74). But, because most of the items of maintenance in 1896 were improvements of the existing plant, costing as to the principal items—*e. g.*, the brick pavement instead of wood—much more than the old plant replaced, it was insisted that the expenditure must be capitalized, although not increasing the earnings and although any conservative business management would provide for such necessary maintenance or renewals out of income.

The reasons why the managers of the company did not feel justified or warranted in capitalizing these improvements in 1896 were explained in the testimony. Thus, it was shown that the expenditures were of the usual character (pp. 198, 199, 235, 236, 240, 336)—that is to say, every year some different part required renewal or improvement or extension. It was also shown that the improvements did not constitute any extension of the existing system (pp. 240, 317), that the present facil-

ities were simply renewed or reconstructed (p. 340), that the larger part of the expenditure was upon the old yards and constituted renewals (p. 338),that depreciation even with constant repairs will be fully ten to twelve per cent. per annum (pp. 121, 235, 236, 237), and that the renewals are growing larger year by year (p. 199). Indeed, it was shown that the plant, which as it now stands has actually cost $1,593,038.07 (p. 350), does not in many portions last more than from three to five years (pp. 121, 443, 590, 591), that it was twice entirely rebuilt in the nine years between 1887 and 1896 (p. 213), and that it was practically all rebuilt within the last seven or eight years (p. 238). In Chicago, the stock-yards require rebuilding every five to nine years (p. 443).

The largest item of improvement during the year 1896 was for new vitrified-brick flooring for the pens and alleyways, which of itself represented an expenditure of $75,169.87 (p. 90). It was expected that the laying of this brick pavement would be concluded within three or four years (p. 235), and that after completion it would cost about $30,000 or $40,000 a year to maintain in repair (p. 236). The depreciation of this brick paving seems to have been assumed by Judge Foster as equal to two per cent. per annum (p. 871), when, as matter of fact, the only expert and qualified witness called as to the life of such a pavement was W. W. Atkin (p. 587 *et seq.*), who testified in answer to questions put to him by Attorney-General Boyle as follows (pp. 590, 591):

> "Q. What would be the average life of that pavement in the yards?
>
> A. Well, it would last from seven to ten years, probably. It is pretty hard to get at what the life of

that would be. In the alleys the life would be a good deal shorter than it would in the pens.

Q. Do you mean to say that a vitrified-brick pavement put down as that is put down in the yards would not last more than seven years?

A. It might, but I doubt it.

Q. How long does a vitrified-brick pavement last on the streets?

A. It has been known to wear out in the city inside of three years so it had to be replaced.

Q. Three years, then, is the average life of brick pavement in cities?

A. No; it is not the average, but they have been known to do it.

Q. What is the average?

A. Well, from four to five years.

Q. It is not the best and most durable pavement to put down?

A. Yes; it is supposed to be."

This was the only competent witness upon the duration of the life of such a pavement, although it is true that the complainants' witness, Morse, who had had no experience with brick pavement, testified that he thought the life would be from twelve to fifteen years, but this was corrected by Mr. Atkin as above, who was qualified from practical experience to testify to the facts. Judge Foster's basis of two per cent. depreciation would give the pavement a life of fifty years!

The accounts as prepared and kept by the stock-yards company do not show a dollar of allowance for depreciation in 1896. Undoubtedly this was because the managers considered that the improvements offset the depreciation. The court will note that no allowance whatever was made by the master for depreciation, although in valuing the property he did deduct for depreciation, and that Judge Foster allowed $75,400 for depreciation (p. 872), which was about five per cent. If, however, we take

ten per cent. for depreciation, which was the minimum testified to, the company would have to set apart *in addition to repairs* $159,303 every year. No entry was made in the profit and loss account. The reason is apparent. The actual improvements were $169,584.65, which was about equal to the depreciation. If they were paid, as they were, out of earnings, then earnings could not properly be debited with depreciation. It must strike the court as unfair that the master should, in reporting the present value of the plant, deduct for depreciation, but, in reporting the net earnings applicable to dividends, allow absolutely nothing for depreciation. The testimony shows that in the year 1896 $32,209.22 was expended in repairs (p. 70).

It is important to bear in mind that there is a distinction between repairs which must be made from time to time and the life of such a plant, which notwithstanding constant repairs, is limited. Atkin's testimony is to the effect that a brick pavement requires twelve to fifteen per cent. to keep it in constant repair (p. 590), but that the average life of the pavement would not probably last more than from seven to ten years (*ibid.*). The difference between repairs and renewal was well explained by one of the witnesses as follows (pp. 236, 237):

> "The impression has been given by witnesses that ten per cent. of the cost of structures applied to those structures each year would give us all practically new property. Now, that practically is not the case at all. The truth is that repairs begin to a limited extent as soon as a building is completed where it is exposed to this rough use in the yards, and the repairs continue for a certain length of time until the building or whatever it may be is regarded as not being worth repairing any longer, and then it

is taken down and replaced. To give an example of that, in 1889 the company built an extensive viaduct over the Union Pacific and Missouri Pacific tracks which cost a large amount of money. It was built as well as we thought it could be built for the purposes for which it was to be used. It has been in use ever since then. It has been kept in repair at a considerable expense ever since then. The planking has given out in the floors and some of the material is not so good as others. Whatever has been necessary to be done has been done to it both in the flooring and in the structure itself. Here a month or two ago, in the inspection which is going on, it was declared to be unsafe, and that there was nothing to do but to tear it down and build another; that it could not be repaired in such a way as to be fit for service and be safe for use, so it was condemned and a new structure is now being prepared to replace it; but in spite of the fact that it has been condemned and must be taken down and a new structure erected in place of it, right now there are repairs being made upon it which will require an expenditure of three or four hundred dollars in order to keep it going as long as possible, so that the cutting out of the use of it will be just as short as possible. I want to make that distinction between ordinary repairs which go on all the time and these renewals which come along from year to year. That would be true of every piece of property of a perishable character which we have about the yards. The same thing is true of the hog sheds. The hog sheds are kept in as good repair as possible all the time, but they only last a certain length of time, eight or ten years, then they have to be torn down and new ones constructed. It does not pay to try any longer to put in new posts and new material here and there in them. It is the same experience which every railroad company has with its rolling stock. I have had some experience in that line. A box car is said to have a certain length of life—ten years, we will say—but that does not mean that the car can be put upon the track and run for ten years, but it means that every month it must have some repairs, and, in spite of all repairs, after a certain length of time it must be taken into

the shop. The same is true of locomotives. They must be constantly repaired, but they have a pretty certain length of life and at the end of that time they have to be renewed."

The officers of the Kansas City Stock-Yards testified fully why they could not, in their judgment, capitalize these improvements and sell stock to provide the necessary funds, as had been done in the past. In addition to the facts stated above, they showed that the plant in 1896 had been completed (p. 237), that the construction account was closed (p. 238), that even in the past only a part of such expenditures were ever capitalized (p. 344), that the authorized capital stock of the company was $7,500,000 (p. 237), of which only $131,350 remained unissued (pp. 71, 238, 339), that this unissued stock had been reserved to buy additional *necessary real estate* (pp. 238, 239), that the business of the company had in their judgment reached its maximum (pp. 187, 238, 239, 325, 339, 385), and that there was then no anticipation of increase of business (p. 240). Mr. Morse, the general manager of the company, explained the situation at page 239 as follows: "It is my judgment and the judgment of those who have looked most carefully into the matter that we are very near the maximum point on our business at this time." In testifying again on this point at page 339, he said: "Another reason [*i. e.*, why the improvements of 1896 were not capitalized] was that we regarded the business as approaching a maximum now; it has not varied materially from year to year." In other words, the practical men who are at the head of this business considered that the receipts of live stock had reached the maximum number to be marketed in territory tributary to this market (p. 385), and that, consequently, the earnings would probably not increase.

In order to show that the business of the company had probably reached its maximum, the attention of the court is called to the figures shown in the testimony and exhibits on file. Thus, the total yearly receipts of the yards, as evidenced by the number of live stock handled, increased from 167,199 head in 1871 to 2,522,239 head in 1884, or over 1,500 per cent., and from 2,522,239 head in 1884 to 4,986,955 head in 1890, or about 100 per cent.; but between 1890 and 1896 the receipts increased to 5,471,246, or less than 10 per cent., of which increase nearly all was made in 1896 over 1895. The receipts of hogs since 1890 have never equaled those of that year (p. 385). The receipts of cattle from the state of Kansas, which in 1893 were 1,071,776 head, were only 363,430 in 1896, *a loss of 208,346 head;* the receipts of calves, which in 1893 were 57,000 head, were only 33,000 head in 1896, *a loss of 24,000 head;* the receipts of hogs, which in 1890 were 2,051,589 head, were only 1,625,848 in 1896, *a loss of 425,741 head;* and the receipts of sheep, which in 1893 were 295,000, were 294,000 in 1896 (p. 239). Although there was an increase in the total number of head in 1896, the average receipts of the seven years from 1890 to 1896 were less than the receipts of 1890.

Surely, it is then no pretense to say that these figures admonished the managers of the company that it was time to cease issuing new stock for improvements; and it is fair to assume that any court of equity, far from condemning, will applaud this conservative and honest policy. An industrial company may well be justified in capitalizing improvements while its business continues to increase; but, after the maximum has been reached, it would obviously be improper to sell new stock for improvements and make no provision for depreciation.

There was a mistake in the briefs of the Attorney-General filed on the original hearing in regard to this point. The statement was made that these improvements were actually capitalized in 1896, and stock issued to the stockholders to represent the expenditure (brief on original argument, pp. 50–52, 68). The record shows the contrary (pp. 237, 238, 339, 345), and the master so found (p. 71).

Referring to the item of $169,584.65 for improvements, the answer of Attorney-General Boyle states as follows (p. 885):

> "And the reasons for a failure to capitalize said improvements for 1896 were that there was a surplus in the treasury at Kansas City in excess of said amount, besides the large surplus in the Boston financial office, and the amount of stock that might be issued without amendment to the charter or filing a new charter was less than said sum, *and it was intended to use the remaining stock for the purchase of certain lands north of the north yards.*"

When we reflect that this statement in the answer was sworn to and filed after all the testimony had been taken, and after the application for an injunction had been denied by Foster, D. J. (pp. 874, 906), the answer must be taken as conclusively establishing the position that stock was not issued for the improvements made in 1896. The Attorney-General cannot be permitted now to change front and mend his hold by the claim that the improvements were in fact capitalized.

But, fortunately, the testimony also clearly establishes that no part of the outstanding stock, amounting at par to $7,368,653, was issued after June 25, 1896 (pp. 287, 339). The express finding of the master and court below, and the uncontradicted testimony is that the extensions of improvements made in 1896 *were not capitalized* (pp.

62, 71, 237, 238, 287, 345). There should be no misunderstanding upon this point in view of the explicit proof in the record. Mr. Morse testified at page 237 (and the expert who examined the books on behalf of the Attorney-General practically confirmed this, pp. 740, 741): "Q. State if any of the expenditures made from the gross earnings in 1896, other than ordinary operating expenses, have been capitalized—that is to say, represented by an issue of capital stock. A. No, sir; there has not. Q. Any of the operating expenses been capitalized, Colonel Morse? A. No, sir; they have not." And at page 345: "Q. You were asked something about the capitalization of earnings that were expended for construction or cost of maintenance in certain years. Were they capitalized in 1896? A. No, sir; they were not. Q. Can they ever be capitalized in the future? A. No, sir."

3.

As to the value of the property and the capital invested.

The master reported that the lands of the stock-yards company had cost $2,064,984.56 (p. 64), and had increased in value to $3,600,626 (p. 77). The appellants contend that the master's basis of valuation was erroneous, and that on any fair and legal basis of valuation the value of the land was at least $5,600,000 for stock-yards purposes (pp. 191, 192, 330–331, 344). The cash investment between 1884 and 1896 was $2,259,516, excluding $500,000 of stock issued to the Armours (pp. 218, 231, 289). The amount of profits re-invested since 1884 was $1,437,882, according to the testimony of Mr. Morse (p. 231). The evidence shows that stock to the amount of $1,562,483 has been issued to represent undistributed net profits invested and capitalized (see appendix A).

The real dispute between the parties at the time the testimony was being taken, as clearly shown by the record, was as to the basis of valuation of the real estate. The appellants contended below as here that the property of the company should be valued in its present condition as a stock-yard, to which special purpose the company's lands, by reason of their location and surroundings, were especially adapted. In other words, they insisted that the test should be the value to the stock-yards company itself of this particular property as if it were being taken for public use (*Monongahela Navigat'n Co.* v. *United States*, 148 U. S. 312, 341, 343). The Attorney-General of Kansas, on the other hand, contended that the valuation should be on the basis of bare land, irrespective of its special adaptability and particular value, to which might be added the value of the improvements at the mere cost of reproduction. Upon the question of the value of the land owned by the stock-yards company and devoted to stock-yards uses, the witnesses testifying as to values are to be divided into two distinct classes. In the first class are the witnesses called on behalf of the appellants, who either valued the property in its present condition, or valued the lands with particular regard to their special value for stock-yards purposes in view of their location and surroundings. In the second class are the witnesses called on behalf of the defense, who testified solely to the value of the property as bare or naked land without regard to its value with improvements or for stock-yards purposes. *There was not a single witness called on behalf of the Attorney-General who testified to the value of the property in its existing condition or for stock-yards purposes; but, on the contrary, all except one had to admit that they did not calculate or*

include any such purposes in their estimate of the value (pp. 619, 621, 666, 683–684, 696, 697), *and the testimony of the one witness who did not so state is of no value* (pp. 632, 637, 645). The portions of the record which establish the incontrovertible accuracy of this statement are set forth for convenience of reference in appendix B to this brief.

The theory of the defense below, therefore, was that the property was to be valued upon the basis of naked or bare land dissociated from its present or past use, and this rule was followed by the master in arriving at the conclusions stated in his report and adopted by the court below. As the master states in his report, "the evidence on this subject was all adduced on the hypothesis that the land was divested of all improvements, but upon consideration of all adventitious advantages accruing to it from its location and environment, and upon this basis my estimates of the value of such real estate are made" (p. 77). There can be no question that the master excluded all consideration of (1) the value of the property in its actual condition with its valuable improvements, and (2) the special value of the land in question for its most available and especially adapted purpose, namely, stock-yards. That this special value for stock-yards purposes is an entirely proper element in any estimate is emphasized by the argument of the Attorney-General in this court (brief on original argument, p. 70) that there must, of necessity, be large stock-yards at Kansas City, and that, "if the Kansas City stock-yards were to-day wiped out of existence another market-place would soon be found where all the business would be done, and as much business would center there as is now centered at these yards." The uncontradicted testimony is that no other equally available

ite exists in Kansas City (pp. 453–454, 634), and consequently *this* site must have a special value for stock-yards.

If we take the testimony of the appellants' witnesses, we shall find the value of the bare land divested of all improvements to be fully $5,600,000 for stock-yards purposes, or about $2,000,000 more than the master estimated (*e. g.*, 192, 330, 331, 344, 349). This would be an average valuation of about $40,000 an acre, or $4,000 a lot. The master only allowed an increase of $580,641 for the whole period from January, 1884, to June, 1897, or over thirteen years, the period of the greatest development of the city (p. 215). That the land had increased in value $995,000 between 1871 and 1883 was not disputed. This was the increase which was capitalized on the reorganization in January, 1884 (pp. 217, 218, 230, 231, 283–284). As matter of fact, the land has increased over $2,000,000 in value since January 1, 1884, instead of $580,641 as allowed by the master (pp. 491, 497, 507, 542, 543, 556, 563, 564, 571). Besides, the master erroneously excluded nearly $700,000 of real property (finding 41, pp. 75–76), which would have increased his valuation of the land to at least $4,300,000, leaving a difference of about $1,300,000. It is due to the stock-yards interests also to note that the testimony was taken at a period of extraordinary depression in values (pp. 442, 445, 489).

In addition to this value as bare naked land, we have great improvements, now worth, after deducting depreciation, fully $1,480,000 (p. 77), and used in connection with an immense and profitable business. It cannot be doubted that, as between men dealing in the markets of the world, the value of such a property would be more than the bare value of the naked land and of second-hand materials. If we allow any fair amount for this combination, we shall

easily conclude that the minimum valuation of $9,500,000 for the whole, as testified to by the complainants' witnesses (pp. 314, 319, 440, 453, 471), is not at all excessive and fully justifies the premium at which the stock had sold, namely, from 115 to 140 (pp. 156, 212, 291, 353, 354, 439).

The master excluded several parcels of land which should have been included in the lands used for stock-yards purposes. Two of them are the tracts lettered in the master's report (*d*), 8.028 acres, and (*e*), 12.122 acres, (p. 75), and are valued by him as respectively worth $41,140 and $85,000, or a total of $126,140. The land was acquired and is held for present and future stock-yards purposes, and is clearly a necessary part of the plant. As matter of fact, the two tracts are used for the dumping of manure and offal, and, if not so used, other property would have to be bought or leased for that purpose (pp. 167, 169, 193). Foster, D. J., refers, at page 872, to the omission of these parcels by the master, and intimates his view that they should have been included as a necessary part of the stock-yards plant, for he includes their value in his estimate. Under the evidence in the record, there should be no other reasonable conclusion than that these parcels should be treated as part of the property now actually used for stock-yards purposes.

The evidence shows another item which should have been included in arriving at the fair value of the capital invested and employed in the business of the stock-yards company. The master found that the stock-yards company had paid in cash, land and stock $817,944.28 in order to induce the establishment of packing plants in the immediate vicinity of the yards, and thus create a constant demand and stable market. The master's report briefly summarizes this feature of the case as follows (pp. 60, 61):

"At the date these yards were opened by the Kansas Stock Yard Company, there were no packing-houses at Kansas City, but soon thereafter a small one was established by Bigger & Company, with a daily capacity of from 100 to 150 hogs. This was followed by the erection of several beef, pork and mutton packing establishments in the immediate vicinity of the yards, with a large capacity for the slaughtering of live stock, amounting in 1896 to 894,537 cattle, 58,331 calves, 2,263,143 hogs and 685,727 sheep. Many of these establishments were secured to locate at Kansas City and in the immediate vicinity of the yards by the energetic, persistent and continued efforts of the defendant company, and of the company to whose rights it succeeded as hereinafter set forth, by the payment of large sums of money, the conveyance of valuable real estate, and the issuance and delivery of shares of its capital stock. . . . All of these companies are now actively engaged in business near the yards, except Kingan & Co. and Hollis & Co., neither of which has been in business for at least two years last past."

The question is whether this necessary expenditure ought properly and fairly to be considered in determining the amount of capital actually invested upon which a reasonable rate of interest or return may be earned. Of course, the fact that in two instances stock, which was worth above par, was issued instead of money (pp. 266, 285, 318) cannot make any difference. The stock itself could have been sold and the proceeds in money paid over. If these expenditures are not to be directly considered, at any rate they show how proper it is to value the property for stock-yards purposes. These expenditures were made in order to increase the value of the property for that particular purpose.

All the witnesses agreed that the existence of these packing plants in close proximity to the yards was the main cause of the growth and stability of the

market at Kansas City (pp. 139, 144, 174, 320, 321, 327, 329, 347, 353, 394, 399, 434, 451). The necessities of these plants create a constant demand for live stock, and without these packing houses the market would not exist. Indeed, during the year 1896, these packing plants bought one-half of all the cattle sold at the yards and four-fifths of all the hogs (pp. 139, 144). Moreover, the increase in the business of the yards has been most pronounced since the establishment of these packing plants (p. 399).

This expenditure on the part of the stock-yards company has undoubtedly created the market more than any other cause, and it has correspondingly benefited Kansas City and all the patrons of the yards. These patrons in 1896 received for their live stock $1,500,000 more than they could have realized elsewhere (pp. 74, 123), principally as the result of the establishment of packing plants at Kansas City. Reaping the benefit of this expenditure, is it now quite fair to say that the owners of live stock are not to contribute in any way to pay interest on this expenditure?

It was also shown that the stock-yards company had on hand in its business some $400,000 in cash and credits (p. 76). This was entirely thrown out by the master. There should hardly be much need of arguing the proposition that such a concern must have a reasonable amount of working capital. It is called upon to purchase supplies at wholesale, to advance freights to the railroads and otherwise constantly to disburse funds. It is pressing the stock-yards owner altogether too far to say, and it would be grossly unjust to hold, that the cash working capital which he finds necessary to carry and have on hand for use in the business and for the accommodation of the patrons of the yard is not to be considered

as any part of the capital invested upon which some return is to be expected. What paralysis would seize the business if the stock-yards company were to refuse to advance freights, etc., and compel each owner of live stock to attend personally and finance for himself!

There is another error that requires correction. The Attorney-General was not warranted in stating, in the brief filed in this court upon the original argument (p. 27), that the "capital stock issued and outstanding is admitted to be far in excess both of the amount of money actually invested in the concern and of the value of the tangible property," for no such admission was ever made, and the facts and record do not support any such statement.

The cash investments of the owners of the stock-yards in this enterprise and the present values, according to the master's basis and the concession of the Attorney-General, may also be stated here in order to dispel some misconceptions as to what the facts really are, as shown by the record.

The cash investments are:

1.	Cash investment for stock at par (record, p. 79)..... ...	$2,484,500 00
2.	Earnings invested in property and improvements instead of being distributed (p. 79).....	2,369,173 00
3.	Conceded increase of value of land as reported by master (pp. 64, 77).....	1,535,641 44
	Making a total investment of	$6,389,314 44

The present value, however, should be:

1.	Master's report of value of land now actually used for stock-yards purposes, divested of all improvements (p. 77)	$3,600,626 00
2.	Master's estimate of improvements, *after deducting for depreciation* (p. 77), about	1,480,000 00
3.	Master's estimate of property not then used for stock-yards purposes, erroneously disallowed by him (p. 76)	1,200,000 00
4.	Master's report as to actual cost of locating packing industries (p. 61)...	817,944 28
5.	Master's report as to value wagons, horses, supplies, etc., on hand (p. 77)	307,377 25
	Making a total of	$7,405,947 53

or $37,297.53 in excess of the $7,368,650 of capital stock issued and outstanding taken at par.

The actual cost of the bare or naked land used for stock-yards was $2,064,984.56 (p. 64); and the master, valuing it as bare or naked land, reported that it had increased in value to $3,600,626, or an increase of $1,535,641.44 (p. 77.) If the master had allowed for the value of the property in its present condition, having regard to its peculiar adaptability to stock-yards purposes, it cannot be doubted that he would have reported that the value of the bare land had increased to at least $5,600,000 during the long period which the stock-yards company had held it. The appellants insist that even as bare land it had increased in value much more than the master reported—at least double the increase of

$1,535,641.44 allowed by him. It will be observed that while the master reported that the main yards in Kansas (40.659 acres) had increased from a cost of $230,110.81 (p. 64) to $1,219,770 (p. 77), yet he reported that the yards in Missouri (41.708 acres) had increased only from the cost of $1,691,619.59 to $1,876,860 (pp. 64, 77).

4.

As to the stock dividends.

Between 1871 and 1897 the owners of the stock-yards property from time to time invested in the enterprise $2,484,500 in cash, and they received for their contributions an equal amount of stock at par (p. 79). All of the stock at any time sold was subscribed and paid for in cash at par (pp. 213, 215). The company also invested year after year a large part of the surplus earnings in new property or permanent improvements (pp. 213, 235–237). In other words, instead of dividing all the earnings and issuing stock or bonds for the funds to acquire new property and make necessary improvements, they invested surplus earnings. Of these surplus earnings, $2,369,173 were capitalized, and stock was issued to the stockholders at par to represent their respective distributive shares in these earnings (p. 79). The master reports and the Attorney-General suggested in his brief on the original argument that these stock dividends, were "issued to the stockholders without the payment of any money by them" (p. 4). While this is true in the letter and form, it is not true in the spirit and essence. There is absolutely no dispute that net profits of the company were invested in the purchase of additional land and in permanent improvements to the amount of at least $2,369,173, for which capital stock was issued. There can be no question, in law or common sense, that the stockholders could every year, from

the beginning and as long as the business was steadily increasing, have taken out of the business all the net profits with perfect propriety, and sold stock or bonds to procure the funds found necessary from time to time for the purchase of additional property. Instead of taking the money in dividends and then securing the necessary funds through sales of stock or bonds, the stockholders allowed the net earnings, which equitably belonged to them, to be permanently invested in the business, which was then constantly growing. If they had distributed all the net earnings in dividends and sold $2,369,173 of stock or bonds to the public, there would today be absolutely no question but that the business represented an investment of that amount. Added to the other cash contributed, it would make the total actual cash investment $4,853,673. It is confidently submitted that this court will look at the substance and not at the form of the investment, and that it will never hold that the owners of this stock-yards property are prejudiced, because, instead of dividing all net earnings and selling new stock or bonds for additional property and improvements, they saw fit to adopt the more conservative course of using the net profits for capital expenditures and representing such capital expenditures by stock.

It may also be again urged, as a prejudicial circumstance, that dividends were issued to represent the increased value of the lands. Now, if, as matter of fact, there was an increase in value, this transaction was perfectly honest and legitimate.[1] On the other hand, if there was no increase in value, the transaction was not honest or legitimate, and would constitute a most objectionable form of

[1] As one of the witnesses testified—"Well, in any business transaction, as I understand it, if you put one dollar in an enterprise or a property, and it becomes worth three, you are entitled to put that value upon it" (p. 327).

stock-watering, which no court should take into consideration in determining the true value of any property. As we have already seen, the Attorney-General admits that "this property has greatly increased in value since the organization of the stock-yards," and concedes that the increase in value was as reported by the master—namely, $1,536,031 above cost (record, pp. 64, 77; defendant's brief, p. 73). The only capital stock issued to represent increased values was $995,000 in 1884 on the organization of the new company, and $1,058,067 in 1888, making together $2,053,067, *which covers the whole period of twenty-five years, and the growth of Kansas City from a village to a great city.* Therefore, the only basis for a prejudicial suggestion is at most the difference between the increased value found by the master and the par of the stock issued, and that difference is $517,036. But there is absolutely no evidence that, when these stock dividends were declared, the actual value of the property did not more than justify the amount of stock issued. Besides, the dividends were declared in 1883 and 1888, a period of prosperity and high values; and the testimony in these suits was taken in 1897 at a period of extraordinary depression of values all over the country, and particularly in and about Kansas (record, pp. 215, 442, 445, 489).

The Attorney-General stated that the increased value of land capitalized by the issue of stock amounted in the aggregate to $2,593,067 (brief on original argument, pp. 4, 5). This is clearly an error, which has resulted from a mistake made by the master in the table prepared by him and printed in the record at page 79. The master reported, as part of the "stock dividends based upon increased value of lands," $40,000 of stock issued at par in 1879 to Fowler Brothers and $500,000

issued at par in 1893 to the Armour Packing Company for the purpose of inducing them to establish packing plants in the immediate vicinity of the yards (record, p. 61). There is no pretense that Fowler Brothers and the Armour Packing Company did not receive this stock, nor is there any doubt that it was issued as the equivalent of an equal amount in cash (*e. g.*, p. 266). It is not contended that this stock was improperly or improvidently issued or without full value received, or that the stock-yards company and the market at Kansas City have not been immeasurably benefited thereby. The propriety of the expenditure can hardly be doubted. But, in any event, whether the policy was wise or not, no court can possibly hold that these payments to third parties constitute, directly or indirectly, in any shape or form, a stock dividend distributed among the stockholders. As matter of fact, it lessened their interest in the assets.

Another branch of this feature of stock dividends should be explained. Between 1871 and 1884, the original company from time to time increased its capital stock to represent either money put in or undivided earnings invested in additional property, betterments, improvements or extensions. In December, 1883, the par value of its capital stock was $995,000, and it represented either cash put in or, what is the equivalent, earnings re-invested. In the meantime—that is to say, between 1871 and 1883—the value of the property had increased with the advance of the city itself and the increase in value of all surrounding property, so that the value of the land and improvements then actually used or retained for stock-yards purposes was at least $1,990,000, irrespective of other lands not used for that purpose and which were not then transferred.

The stock-yards company in December, 1883, deter-

mined to increase its capital stock to the true value of the property it owned and used for stock-yards purposes. It found it impossible under the laws of Kansas to further increase the capital of the existing company, and therefore a new company was organized with substantially the same name, and to this new company the old company sold its stock-yards property for $1,990,000, which was paid in new capital stock at par (pp. 283, 284). As the record establishes that this property was then worth at least that amount, there is obviously no ground for criticising or condemning the change of capital or the reorganization. *None of the witnesses called on behalf of the defense ventured to contradict the testimony on behalf of the complainants as to the value of the property in January, 1884, or as to the fact that the lands and improvements transferred to the new company were actually worth at least $1,990,000 at the date of transfer, and no evidence in the case tends in the slightest degree to impeach or lessen the effect of this direct proof* (pp. 212, 213, 217, 218, 230, 231, 283, 284). Instead of selling the property, as could easily have been done, and realizing $1,990,000, and distributing the proceeds among the stockholders, the company saw fit to reorganize and recapitalize the business, and place the par of the capital stock at what was indisputably the fair, true, honest and intrinsic value of the tangible property it represented. If the property, which then covered nearly one hundred acres, with the buildings, pens and other improvements thereon, had doubled or trebled in value by reason of the extraordinary development of the city and of the market, the owners were by every rule of justice and common fairness entitled to the benefit of that increase. They could, of course, have been taxed upon the increased value. They could have realized the amount for

their property by selling it. The substance of the transaction was to give the stockholders of the old company two shares of new stock for one share of old stock; and the result was the same as if the company had then sold its property for $1,990,000 in cash, and distributed the proceeds *pro rata* among the stockholders. In a word, the stockholders got $200 in stock for each existing share instead of $200 in cash. This did not in any sense constitute a watering of stock. Of course, it is not claimed on behalf of the complainants that the fact that a new company was organized instead of increasing the capital stock of the old company makes any substantial difference; but it is insisted that the transaction was in every aspect legitimate, for it was perfectly proper and honest, legally and morally, to increase the stock capitalization if the valuation and earning capacity clearly justified it. At any rate, there is absolutely no allegation or proof challenging the entire integrity and propriety of this transaction, and it must be accepted as honest until the contrary be proved.

5.

As to the feed charges.

The predecessor of the present Attorney-General of Kansas insisted below that the legislature of Kansas might properly regulate the yardage and feeding charges of the defendant company in Missouri, because it was a Kansas corporation, and that position was taken in the answer (p. 898). Attorney-General Boyle clearly intended to enforce the law as having an extra-territorial scope and effect and as applying to interstate commerce. *The bond in the penalty of $200,000 exacted from the stock-yards company expressly covers yardage and feeding in Missouri* (pp. 961–962). The concession made by the present Attorney-General (brief on original argu-

ment, p. 19), that "there is nothing in the act which indicates any intention that it shall operate outside of the state," would seem to remove that feature from the case, for the court, in view of this admission, will not further consider, it is assumed, whether the act has any force or effect in Missouri. But as the court below exacted a bond covering yardage and feeding charges made by the defendant company in Missouri, this court must reverse the decree in that respect, for otherwise the penalty of the bond would be enforcible and the decree would be *res adjudicata* upon that point.

The facts on this branch of the case may be briefly stated. The feed is ordered, sold and paid for in the Missouri yards (record, pp. 65, 119). The average amount of hay fed to cattle is 5 pounds per head, for which the charge is 5 cents, and this covers not only the hay itself but the service of feeding, spreading on the floor, etc., etc. The average charge for feed per hog is 1½ cents, and the average charge for sheep is less than ½ of one cent per head (pp. 110, 113, 114, 141, 367, 368, 387). The main cost of the service is in the labor, for there will be 20 separate deliveries to one ton of hay (pp. 109, 113, 118, 142), and it will be fed to 400 cattle (pp. 366–367). Thus, if we take a ton of hay as a basis, we find that it is bought in large quantities and of the best quality and costs about $9 a ton including necessary insurance, etc. (p. 143). It is sold for $20 a ton, no matter what it costs, although the company has had to pay as high as $15 and $24 a ton (p. 143). It is difficult to determine the cost of the labor of delivering and feeding. It probably costs the stock-yards company more than any other service rendered (pp. 109, 118). It certainly costs at least 40 per cent. of the gross price

realized (pp. 124, 142, 199, 235, 240). If we allow to this department its fair share of depreciation or improvements and cost of barns, wagons, etc., the cost of labor and maintenance is fully 50 per cent. Therefore, the ton, which is retailed in 20 separate lots and fed to an average of 400 cattle, realizes $20, made up as follows:

(*a*) Cost at wholesale and insurance	$9 00
(*b*) Labor at least 40 per cent. (p. 235) or	8 00
(*c*) Leaving a profit of less than 20 per cent. or	3 00
	$20 00

to cover the cost of maintenance and the fair proportion which this department should bear of the investment.

But, if we charge against the feed department its fair share of the cost of operation, maintenance and depreciation—say, 50 per cent. of gross receipts—we shall have the result as follows:

(*a*) Cost at wholesale and insurance	$9 00
(*b*) Labor, etc., 50 per cent	10 00
(*c*) Leaving the profit per ton, for feeding 400 cattle, only	1 00
	$20 00

Now, a statute regulating the charges of an innkeeper might attempt to prescribe that all food should be sold at not to exceed one hundred per cent. over the market value. It would sound fair and plausible: one hundred per cent. above *cost!* Yet it might be ruinous. It might represent no profit whatever. It would be shown that eggs, potatoes, fruits and meats are all bought at wholesale and sold for many times their original cost. Thus, eggs that may cost twelve cents a dozen at wholesale might be served by the innkeeper at five cents apiece—an increase of 400 per cent. over cost; but it would at once be recognized that this was not profit, and that after deducting labor and cost of operation, maintenance, rent, etc., probably little or no profit would be made. We are not

re to ask a *profit* of 100 per cent. above cost of material
d labor. Far from it. The legislation is that no matter
at the *cost* may be—including original cost and cost
insurance, maintenance of barns, etc., labor in keeping
d delivery and feeding—the price shall be arbitrarily
ed at 100 per cent. above the market of the day pre-
ding, irrespective of the amount of profit or loss which
at price may involve to the company.

The Attorney-General contended that the statute
tended to limit the price to 100 per cent. above the
tail price of the market (brief on original argument,
22); but the retail price in such small lots as five
nts' worth or even one dollar's worth of hay was
t shown, and could not be shown, as the court will
adily perceive by referring to the testimony adduced on
half of the defense. Of course, there is no such retail
siness in the small lots referred to except in stables and
ttle yards. Moreover, the market price *at retail* was not
own by competent evidence, and consequently there
as absolutely no excuse for mulcting the stock-yards com-
ny and exacting the bond (p. 961). It was the price at
holesale by the ton that was the basis of the master's
port (pp. 141, 143). Had some witness engaged in
e business of feeding cattle or other live stock been
lled, and it had been shown that he was qualified by
perience, his testimony would have been of practical aid;
t none such testified. The business of a stock-yards
essentially different from a feed store (pp. 141, 142);
is in the nature of a stable or cattle-yard. A man who
ys at wholesale can readily sell by the ton at a profit of
dollar or two, provided he can sell in bulk and does
t have to deliver it; but if he has to make for each
n 20 separate deliveries and feed 400 head of cattle,

it would be unreasonable to expect him to sell a ton of hay for even double the cost at wholesale for large lots. It is the universal experience in all businesses that the cost of labor greatly and necessarily increases the price at retail over the price at wholesale. If, to repeat, the legislation gave the stock-yards 100 per cent., or 50 per cent., or 33⅓ per cent. clear profit on its feed, estimated fairly on original cost and labor, an entirely different question would be presented. But it does not do so. It arbitrarily prescribes that no matter what the actual cost of the hay and labor may be, and no matter what the cost of the service of delivery and feeding, the charge shall not exceed what other dealers not similarly situated may sell for under essentially different conditions.

Three witnesses were called by Attorney-General Boyle to prove the market value of feed, namely, Spellman, Fish and Tyler (pp. 768, 770, 773). Spellman testified on cross-examination that there was no market price for such small lots as the stock-yards company sells, and that "each man makes his own price" (p. 770). Fish said that although he would sell five cents' worth if requested, yet he "would not deliver such a small quantity as that," and that it would not pay "to send my wagon out with it" (pp. 772, 773). Tyler simply testified as a wholesale dealer, and not as a retailer, and the prices he quoted of $9 per ton for hay did not include delivery (p. 774).

Moreover, there is absolutely no compulsion about this feeding. There is no suggestion in the record that the feeding in cars is not just as convenient for those who object to the charges of the stock-yards company, and as humane to the live stock (pp. 115, 117, 322, 397, 788, 795). Indeed, one of the Attorney-General's witnesses, Peck, testified that it was his practice to feed in the cars

(p. 788). The reason why most of the live stock owners prefer to feed at the yards is undoubtedly because of the extremely reasonable charge per head of cattle, etc., made by the stock-yards company, and because they could not themselves, or at any yard or stable in Kansas City, obtain the same service for anything like the same low charge. Indeed, the testimony shows that the large buyers for the packing plants and others find it convenient and profitable to feed at the stock-yards until they need the live stock for slaughter or shipment (p. 424).

In view of this proof, it must be evident that the customary charges for feed are not in themselves unreasonable and that the statutory provision is arbitrary and unreasonable. Moreover, it cannot be fair play to have the master and court below find against the stock-yards company on the basis of market prices at *wholesale* and yet have that finding and the bond exacted thereon upheld in this court by the plea that after all the statute only meant the market prices at *retail* (Attorney-General's brief on original argument, p. 22).

The questions as to interstate commerce and as to how far this act may constitute a regulation of commerce are discussed in the principal brief filed on the original argument. These questions are of great and growing importance, but as the case can be decided on the merits upon the assumption that all the business was confined to Kansas—for that is a convenient test as to the reasonableness of the statutory rates—and as the Attorney-General of Kansas now concedes that the operation of the act is to be confined wholly within that state, the question of interstate commerce may be reserved for some other case squarely and necessarily presenting it for decision.

POINTS OF LAW.

The discussion of the law may be divided under the following points:

I. The unconstitutionality of the act as constituting class legislation (pp. 52-59;)

II. The nature of the power to regulate charges (pp. 59-67);

III. The value in themselves of the services rendered and the reasonableness of the customary charge collected by the stock-yards company (pp. 67-88);

IV. The effect of the statute on the gross and net earnings of the stock-yards company (pp. 88-104);

V. The fair present value of the stock-yards property (pp. 104-124).

I.

THE UNCONSTITUTIONALITY OF THE ACT AS CONSTITUTING CLASS LEGISLATION.

In the case at bar, the court is called upon for the first time to adjudicate what elements are to be considered in determining the compensation that an owner of private property, which is claimed to have become impressed with a public interest, is entitled to charge for the use of his property, when such owner performs no public function and enjoys or exercises no special franchise or privilege from the state. In all the previous cases affecting any private business, such as warehouses and elevators, the controversy was as to the existence of the power to regulate at all, and in no way touched upon the reasonableness of the rates prescribed. *Munn* v. *Illinois*, 94 U. S. 113; *Budd* v. *New York*, 143 U. S. 517; *Brass* v. *Stoeser*, 153 U. S. 391. Up to this time, every case involving any inquiry as to the reasonableness of statutory rates has affected public corporations, such as railroad, turnpike and water companies, which enjoy valuable franchises and perform functions of the state, and whose right to exact tolls from the public is derived ex-

pressly or impliedly from legislative grant. *Reagan* v. *Farmers' Loan & Trust Co.*, 154 U. S. 362; *Covington, &c., Turnpike Co.* v. *Sandford*, 164 U. S. 578; *Smyth* v. *Ames*, 169 U. S. 466; *San Diego Land Company* v. *National City*, 174 U. S. 739; *Wisconsin, M., &c., R. R. Co.* v. *Jacobson*, unreported, decided December 13, 1900.

The court is also called upon in the case at bar to decide for the first time whether the doctrine of *Munn* v. *Illinois* shall be extended so that a legislature may, in the case of any business claimed to have become impressed with a public interest, regulate the charges of large dealers, and leave small dealers in substantially the same business free from regulation. In *Munn* v. *Illinois*, *Budd* v. *New York* and *Brass* v. *Stoeser*, the regulation applied to all alike in the same locality, whether owners of large or small warehouses or elevators, and there was absolutely no discrimination because of the extent or volume of business done or the amount of property owned. In a word, under the statutes involved in those cases, there was no class distinction between large and small traders, rich and poor. In the case at bar, all small yards, feeding stations and cattle stables are not regulated or affected. The testimony shows that there are at least two other yards in Kansas—namely, at Wichita (record, pp. 173, 326, 798) and at Jamestown (p. 788)—and, for all that appears, there are numerous feeding stations and cattle stables all over the state. The legislature, of course, had some purpose in wording its enactment so as to exempt all small yards from its operation. The Attorney-General contended in the brief filed on the original argument that, for all that appears, the Kansas City stock-yard is the only stock-yard in the state. If that had been the fact, the legislature would never have worded its enact-

ment in the peculiar way it did, *and the Attorney-General would have shown the fact.* But it is not the fact, as shown by the testimony of defendant's witnesses Peck and Jaquins (pp. 788, 798). On its face, this act exempts and was intended to exempt small yards and small dealers in feed. And "it is a pure, bald and unmixed power of discrimination in favor of" those persons who are engaged in a similar business of yarding and feeding cattle to a smaller extent than at the Kansas City yards. *Lake Shore &c. Railway Co.* v. *Smith*, 173 U. S., 684, 698.

In order that there may be no question in the mind of this court in regard to the proposition urged by the appellants that it was the deliberate purpose of the Kansas legislature to single out large stock-yards and select them as a class for regulation solely because of the volume of business done, it will save much time and discussion to quote from the brief of the Attorney-General of Kansas submitted on the original argument in this court. Thus, on page 12, in answering the contention of the appellants that the Kansas statute conflicted with the equality clause of the Fourteenth Amendment and discriminated against the defendant company, the Attorney-General said:

> "A mere reading of the act should constitute sufficient answer to the objections made. The law is framed upon general terms so as to include all stock-yards in which a certain volume of business is transacted, and will hereafter include other stock-yards in which the business shall grow to the volume indicated. *The legislature has, by this act, classified the stock-yards of the state into two classes*, and has adopted the most natural and reasonable basis for such purposes that could be used, namely, the volume of business done. The reason for this is obvious; the stock-yards doing a large volume of business are necessarily more of monopolies than those doing a smaller business. The public has

greater interest in the business of large stock-yards than it has in the business of smaller ones. The stock-yards of Kansas City furnish the most important feeding-cattle market and one of the largest general markets in the United States. They are the habitual resort of purchasers of cattle, calves, sheep, and hogs. They are situated at the gateway of the commerce of a vast portion of the United States, and as a consequence great numbers of shippers of stock are compelled to use these yards, and the business done there is naturally and properly the subject of legislative control. If there be other yards within the state of Kansas doing a business of such a magnitude and nature as the Kansas City yards, those yards come within the provisions of the law in question. If there be no other yards within the state of Kansas doing such business, then the Kansas City stock-yards are the sole representative of their class in the state. The fact that there is but one plant which is properly the subject of legislative control does not deprive the legislature of the power to exercise its authority with regard thereto.

"Another reason why the classification should be based upon the volume of business done is, that rates which are reasonable and proper and furnish a sufficient return upon the capital invested can very properly be made lower and different in a plant where the volume of business is large, while in a smaller plant doing a smaller volume of business higher rates may be necessary in order to afford adequate returns. It would not be proper to base a classification of stock-yards upon the population of the towns where they might be located, as the business done bears but a trifling relation to the population surrounding the yards."

It is not a proper classification of warehouses or elevators or stock-yards or other private businesses to divide them according to their size or value or volume of business, either for purposes of taxation or for the regulation of their charges. The equality clause of the Fourteenth Amendment will not permit, under the guise

of classification, any such arbitrary division into classes. All persons and corporations are equally entitled to pursue their happiness and acquire and enjoy property; no greater burdens can be laid upon one than are laid upon others in the same calling or condition, and a law which singles out the large warehouses or elevators or stock-yards, and leaves the smaller dealers and traders untouched and unaffected, is a most vicious and dangerous form of class legislation. The decisions of this court should render this proposition so clear as not to warrant any extended discussion. If we apply to the facts now presented the principles announced in the leading cases on the equality clause, this statute must fall as obnoxious to the constitutional guaranties of liberty and property and of equal rights. *Hurtado* v. *California*, 110 U. S., 516, 556; *Barbier* v. *Connolly*, 113 U. S., 27, 31, 32; *Yick Wo* v. *Hopkins*, 118 U. S., 356, 369; *Bell's Gap Railroad Co.* v. *Pennsylvania*, 134 U. S., 232, 237; *Gulf, Colorado & Santa Fé R'y.* v. *Ellis*, 165 U. S., 150, 155, 159, 160, 165; *Allgeyer* v. *Louisiana*, 165 U. S., 578, 589; *Lake Shore, &c., Railway Co.* v. *Smith*, 173 U. S., 684, 691.

As Mr. Justice Brown said in *Lawton* v. *Steele*, 152 U. S. 133, 137:

> "To justify the State in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations."

It is submitted that if a business, as matter of fact,

has become impressed with a public interest, and it is found that the common-law requirement of reasonable charges is insufficient to protect the public, and that legislation is necessary, then the only safe rule, and the only legal rule, in case the legislature does interfere to regulate, is that the regulation shall be by general law applicable to all alike—that is to say, to owners of large and small business plants, to rich and poor. This is the spirit of the Kansas constitution, which provides "that all laws of a general nature shall have a uniform operation throughout the state." [1] A legislature cannot constitutionally limit the right of the owner of a large stock-yard to charge yardage or to sell hay and other feed for such price as he can obtain and leave all other yards and stables free to obtain what they may. This is not a legitimate classification. Such a law is not equal within the true meaning of the Fourteenth Amendment. It is not allowable that large dealers in an article of live-stock food shall be regulated and all other dealers in the same commodity left free until they build up a large and paying business.

It is earnestly submitted that the doctrine of *Munn* v. *Illinois* should not be extended in either of these two important and far-reaching aspects. The doctrine of that case is at best at the parting of the ways. Its soundness has been challenged by some of the best writers and jurists of the country. It will work infinite mischief if legislatures are now told that they may select large concerns for "regulation," and create them by legislative fiat into "public operators," and leave all small dealers at liberty to pursue their trades. If this singling out of the large concerns or the rich for punishment or spoliation

[1] Constitution of Kansas, art. 2, sec. 17.

under the guise of regulation of charges is to be sanctioned, how easily and logically will it lead to similar classification for purposes of taxation! There are cases where the principle involved is so great that the private interest or concern of the particular litigant shrinks almost out of sight. This is one of those great cases and will be a landmark in our jurisprudence. Fortunate will it be for the best interests of our country and its future if this court shall now declare that the legislative power of regulation under *Munn* v. *Illinois* must be exercised by general and equal laws as long as the Federal Constitution guarantees the equal protection of the law. That guaranty should assure to every person and corporation the protection of equal laws applicable to all alike, and impartially administered without favor or discrimination. The golden rule of equality must be maintained as the absolute right of every American. And, infused through the mass of our rights and duties in every relation and condition of life, pulsating through all our interests, may it long continue to pervade, unite and invigorate our whole system of constitutional government.

Security of property rights and confidence in the impartial administration of equal laws have been the true source of our marvelous prosperity during the last three decades, which is the wonder and envy of the world. It is the principle of equality which has given us stability and immense effective force. Whatever temporary local interest or prejudice or blindness may be—whether populism or communism or collectivism—the people of Kansas and other states must inevitably realize that the disregard of the principle of equality and the restraint which it imposes is in conflict with their own vital and permanent welfare, and cannot be tolerated if we are to remain a free people

under the rule of constitutional guaranties, restraining all arbitrary and despotic exercise of the powers of government. "In this sense," if we may quote Burke, "the restraints on men, as well as their liberties, are to be reckoned among their rights."[1]

II.

The nature of the power to regulate charges.

The power of a legislature to regulate or prescribe the tolls or charges of corporations performing public functions and exercising the power of eminent domain really finds its origin and sanction in the legislative grant itself. Without a statutory grant, express or implied, no public corporation, such as a railroad, a turnpike, or a water company, could exercise the power of eminent domain, or could exact toll for the use of the public highway or the public waters. Such a power is in derogation of public and private rights. A toll may truly be termed in effect a common charge on the public. Its imposition and regulation are essentially prerogatives of the government alone. As these public corporations are created and their franchises granted primarily for the benefit of the public, they become and serve as instrumentalities of the state for the common welfare of its people and the development of its resources; and they must be subject to the governmental power and duty of control, supervision and regulation. This control is fair and just, as well to the public as to the property owner; for the charter grant always implies, if it does not recite, that the legislature has reserved the right to prescribe reasonable tolls and charges for the use of the public highways, public waters,

[1] Burke's works, "Reflections on the Revolution in France." Little, Brown & Co.'s Am. ed., iii., 310.

etc., and it may be said that this reservation is a part of the charter contract itself.

Thus, at the present term of this court, Mr. Justice Peckham has set forth the character of these public corporations in the case of *Wisconsin, M., &c., R. R. Co.* v. *Jacobson* (unreported, decided December 13, 1900), as follows:

> "Railroads have from the very outset been regarded as public highways, and the right and the duty of the government to regulate in a reasonable and proper manner the conduct and business of railroad corporations have been founded upon that fact. Constituting public highways of a most important character, the function of proper regulation by the government springs from the fact that in relation to all highways the duty of regulation is governmental in its nature. At the present day there is no denial of these propositions (*Olcott* v. *Supervisors*, 16 Wall. 678, 694; *Cherokee Nation* v. *Southern Kansas Railway Company*, 135 U. S. 641; *United States* v. *Joint Traffic Association*, 171 *Id.* 505–569, 570; *Lake Shore Railway Company* v. *Ohio*, 173 *Id.*, 285, 301).
>
> "It is because they are such highways that the land upon which the rails are laid, and also that which may be necessary for the other purposes of the corporation, is said to be used for a public purpose, and on that ground the power of eminent domain which is given them is held to be a constitutional exercise of legislative authority. The right of the legislature to tax in furtherance of such use is founded upon the same considerations that the use is a public one, and therefore taxation in support of such use is valid (*Olcott* v. *Supervisors*, *supra*). The companies hold a public franchise, and governmental supervision is therefore valid. They are organized for the public interests and to subserve primarily the public good and convenience.
>
> "While this power of regulation exists, it is also to be remembered that the legislature cannot under the guise of regulation interfere with the proper conduct of the business of the railroad corporation in

matters which do not fairly belong to the domain of reasonable regulation (*Lake Shore, &c., Railway Co.* v. *Smith*, 173 U. S. 684)."

The cases which discuss the power of regulating the tolls and charges of railroad, turnpike and water companies emphasize the fact that the companies are performing public functions, that the right to exact tolls comes from the state, that there is an implied condition or reservation in the grant that the tolls shall be subject to legislative regulation, and, *e. g.*, that "it is as vital that the state should retain its control of tolls upon public highways as it is that it should not surrender or fetter its power of taxation." *Covington, &c., Turnpike Co.* v. *Sandford*, 164 U. S., 578, 587, 594. See, also, *Olcott* v. *The Supervisors*, 16 Wall. 678, 695; *Georgia Banking Co.* v. *Smith*, 128 U. S. 174, 179; *Reagan* v. *Farmers' Loan & Trust Co.*, 154 U. S. 362, 393; *Smyth* v. *Ames*, 169 U. S. 466, 544; *Olcott* v. *Banfill*, 4 N. H. 537, 545; *Boston and Lowell Railroad Corporation* v. *Salem and Lowell Railroad Co.*, 2 Gray, 1, 29; *Camden and Amboy R. R. Co.* v. *Briggs*, 22 N. J. Law, 623, 659; *Delaware, &c., R. R. Co.* v. *Central Stock-Yard Co.*, 45 N. J. Eq. 50, 54; affirmed in 46 N. J. Eq. 280; *Erie & North-East Railroad Company* v. *Casey*, 26 Pa. St. 287, 307; *Girard Storage Co.* v. *Southwark Co.*, 105 Pa. St. 248, 251; *Stone* v. *N. J. & C. R. R. Co.*, 62 Miss. 646, 653. Even then the true scope of the power is "to prevent extortion or unreasonable or illegal exactions," as Mr. Justice Peckham said in *Lake Shore &c. Railway Co.* v. *Smith*, 173 U. S., 684, 698. It follows that, when the legislature does exercise its reserved power, the courts may well hold that only in the case of clear abuse ought the judicial branch to interfere, because such reservation is

part of the contract of incorporation and part of the consideration upon which valuable franchises and privileges have been granted and accepted.

But no such consideration exists in the case of individuals and private corporations which exercise no power of eminent domain and perform no public functions or duties. The authority of the legislature to regulate their charges—if, indeed, there be any sound basis for such interference with private property—is derived solely from the police power, and can be upheld upon no other theory. It does not spring from any grant or implied condition or contract, but is founded upon the assumption that it is the duty of the state to protect the public from extortion by those whose property is of such a character that they have the power, as it were, to make a prey of the necessities of the people. Under such circumstances, it is said, the conduct of the particular business becomes a matter of public concern and interest. But obviously the public concern is limited to the prevention of extortionate or unreasonable charges. The *Munn* case was based in great measure upon the statement of Lord Hale that every warehouseman "ought to be under a public regulation, viz., that [he] . . . take but reasonable toll" (*Munn* v. *Illinois*, 94 U. S. 113, 132), and this was recognized by Mr. Justice Blatchford in *Budd* v. *New York*, 143 U. S. 517, 536, as the basis of the *Munn* case. Therefore, if we look to the source of this whole doctrine (Hargrave's Law Tracts, p. 6), we must see that the true principle is that the power of the legislature in respect of such callings as warehousemen, etc., is not to regulate rates or tolls generally, but to subject them solely to the one regulation that they "take but reasonable toll." Beyond this, a legislature should not be permitted to step;

nd, so long as the charges of the owner of such private roperty are not unreasonable or extortionate, the people ave no grievance, no remedy is called for, and the legis- ature should not be allowed to interfere.

It is submitted that there must needs be a broad dif- erence in this matter of regulation between the public or uasi-public use of highways, waters, etc., and the use of rivate property by a class of the public for its convenience nd profit. The distinction is between a use by the people f what is essentially public property or public rights and use by the people of what is essentially private property. n the case of the public property or a public right, the overnment may control, because the use or right is pri- arily public or an instrumentality of the state, within the nction and duty of the government itself to establish, fford, perform or maintain. In the case of the private roperty, the government may not justly or properly nterfere or control at all because there is essentially no overnmental function or quality or duty. If the public ver acquire a right of interference, it is at most on the heory of self-defense and overruling necessity, and it xists only to the extent of that necessity; the remedy is mited by it, and cannot step beyond it.

Private businesses and property ought not, therefore, be placed in the same category as railroads or other ublic instrumentalities, for the ground and scope of the ght and power to regulate are not at all the same n both cases.

In the case of private property so used by the public, court should in fairness and justice recognize equities n favor of the owner which may not exist in the ase of enterprises more or less public. In this country, nder American institutions, the owner of private property

should be guaranteed in fullest measure the legitimate fruits of successful venture and labor. The power of the legislature to control or interfere with property essentially private ought not to be so extensive as in the case of property essentially public; nor ought the courts to indulge, as against the owner of private property, the same degree of presumption in upholding legislative interference or invasion as may obtain when the rates of railroad, turnpike and other public corporations are being dealt with. This is a doctrine which, it is hoped, will commend itself to the court as embodying a sound rule of public policy, as well as a just regard for the rights of property. The owners of the Kansas City Stock-Yards urge that they are entitled to a larger measure of liberty of action and freedom of contract and to a larger profit than they might be entitled to expect if their capital had been invested in a public instrumentality, and they had had the advantages of public corporations and the benefit of the power of eminent domain.

It has not yet become necessary for the courts to discuss and demarcate these two distinct and separate conditions, but the idea is recognized in *Western Union Tel. Co.* v. *Myatt*, 98 Fed. Rep. 335, 341, viz.:

> "The doctrine of governmental control of property and employments devoted to public use is particularly applicable to what are commonly termed 'public-service corporations'—such as railway and telegraph companies—although it is also applied, *though probably in a much more modified degree*, to the property of private persons, which, by reason of its use, has ceased to be *juris privati*."

In the case at bar, the court below held in effect that, though the statutory rates might seem arbitrary and unreasonable according to the ordinary tests of reasonableness, yet, unless they were *confiscatory*, relief should

be denied. Thus, in dismissing the bills of complaint, Thayer, C. J., said (82 Fed. Rep. at p. 856; record, p. 945):

> "Conceding, as we must, that the legislation complained of was radical in its nature and effect, that it reduced the company's income about fifty per cent., *and that it prevents it from realizing on the capital invested in its plant such a per cent. as is ordinarily realized on capital invested in other mercantile and business enterprises*, still the court is not prepared to hold that the statute is *confiscatory*, and that it deprives the company of its property without due process of law."

The appellants are not quarrelling with words or forms of expression. They submit that the word "confiscatory" as defining the test is altogether too ambiguous. They insist that they are entitled to reasonable compensation. If any prescribed rate which results in less than reasonable compensation be confiscatory, well and good, and the term is satisfactory; but if the term "*confiscatory*" requires the property owner to show something more than that the statutory rates are unreasonable, then it is submitted that the term is inaccurate and misleading.

Although this is the first case presenting the question as to the elements to be considered in determining the reasonableness of charges in the case of private property and concerns, nevertheless the labor of the court in previous cases affecting public corporations has elucidated the fundamental principle of justice which will guide to the truth in this discussion. The appellants invoke the protection of that principle as sufficient in this case to protect them from the effects of this class legislation, if it be held that they must submit to discriminatory legislation of this character. The principle is that the owner of property is entitled to reasonable compensation for the service rendered to the public or

to a just return upon the fair present value of the property used by the public, and that the legislature in fixing or regulating charges must do so with reference to what is just and reasonable under all the circumstances—just to the property owner as well as to the public. In applying this principle, the basis of calculation in most cases will be either the value in itself of the service rendered or the fair present value of the property used for the convenience of the public, or both together, and such other equities will be considered as may justly and rightly be given weight in each case. Therefore, if there are equities in respect of industrial enterprises which do not exist in respect of railroads, the court will give the property owner the benefit of those equities. It is also now established that, if less than a reasonable rate be prescribed by a legislature, the constitutional rights of the property owner are illegally encroached upon; and that, if he challenges the justice or reasonableness of the attempted regulation, he is entitled, as matter of unqualified constitutional right, "to a judicial investigation, by due process of law, under the forms and with the machinery provided by the wisdom of successive ages for the investigation judicially of the truth of a matter in controversy" (Mr. Justice Blatchford in *Chicago, &c., Railway Co.* v. *Minnesota*, 134 U. S. 418, 457).

As Mr. Justice Brewer said at the last term, speaking for the court, in *Chicago, Milwaukee &c. R'y* v. *Tompkins*, 176 U. S. 167, 172:

> "The proposition that such a vast amount of property is beyond the protecting clauses of the Constitution, that the owners may be deprived of it by the arbitrary enactment of any legislature, state or nation, without any right of appeal to the courts, is one

which cannot for a moment be tolerated. Difficult as are the questions involved in these cases, burdensome as the labor is which they cast upon the courts, no tribunal can hesitate to respond to the duty of inquiry and protection cast upon it by the Constitution. *Railroad Commission cases*, 116 U. S. 307; *Dow* v. *Beidelman*, 125 U. S. 680; *Georgia Railroad & Banking Co.* v. *Smith*, 128 U. S. 174; *Chicago, Milwaukee & St. Paul Railway* v. *Minnesota*, 134 U. S. 418; *Chicago & Grand Trunk Railway* v. *Wellman*, 143 U. S. 339; *Reagan* v. *Farmers' Loan & Trust Co.*, 154 U. S. 362; *St. Louis & San Francisco Railway* v. *Gill*, 156 U. S. 649; *Covington, &c., Turnpike Co.* v. *Sandford*, 164 U. S. 578; *Smyth* v. *Ames*, 169 U. S. 466."

In the light of these principles, the particular features presented in the present controversy will now be discussed.

III.

THE VALUE IN THEMSELVES OF THE SERVICES RENDERED AND THE REASONABLENESS OF THE CUSTOMARY CHARGE COLLECTED BY THE STOCKYARDS COMPANY.

The element of the value in themselves of the services rendered to the class of the public using the yards for their convenience and pecuniary profit as well as of the reasonableness of the customary charges was entirely disregarded in the court below, and it was apparently assumed that the only basis of computation should be the value of the property used by the public. In neither the master's report nor in the opinions delivered by Foster, D. J., and Thayer, C. J., will there be found any discussion or finding as to the value of the service rendered to the owners or shippers of cattle and other live stock, although that question was presented by the evidence and certain findings relating thereto were reported by the master. All that the master finds is that the charges are substantially the same as those collected in other yards, and that the

price realized by live-stock owners at Kansas City is far in excess of the prices obtainable in the Chicago market (p. 74). Yet it is now well settled that the fair value in themselves of the services rendered to the public must be taken into consideration in determining judicially the reasonableness of the charges made. *San Diego Land Company* v. *National City*, 174 U. S. 739, 757.

The common law, before the legislature of Kansas saw fit to interfere on behalf of the class using the yards, required the charges to be reasonable if the business were impressed with a public interest. These statutes interfering for the purpose of regulating charges or rates are only sustained because at common law the rates had to be reasonable. The established common law rule is itself in effect a regulation of reasonable charges. *Munn* v. *Illinois*, 94 U. S. 113, 134. It has never been held in any case that the legislative fiat could impress a business with a public interest if the public interest did not already exist. Of course, if the business of "yarding, driving, feeding and watering" was not already impressed with a public use, there was absolutely no shadow of legal right to interfere and regulate the rates. Now, it was contended on the hearing that the evidence of customary charges in the past was immaterial, and it was so ruled by the master (record, p. 107; see also p. 127). It should, however, have been recognized that the common law regulating the charges in the past imposed the restriction that they should be reasonable, and that, hence, the evidence of the customary charge was of great weight, if not of almost controlling effect, in view of the fact that this customary charge has been in effect for a quarter of a century. Evidence of the customary charge is, of course, of no weight if we adopt the view of the master and the Attorney-General,

that heretofore the stock-yards company could at common law exact or extort unreasonable charges as it saw fit. In the absence of any proof of a wrong or hardship to a single person using these yards, the Attorney-General nevertheless closed his supplemental brief on the original hearing with the statement (pp. 17–18) that the statutory rates were "only a wholesome restriction upon a business impressed with a public use and upon a corporation which has been guilty of great extortion in the past." Now, there was no excuse for such a statement. There is no proof of any extortion in the past. Nor was there any excuse for stating in this supplemental brief (p. 8) that the "Kansas farmer" had to pay his commission dealer ten dollars per car and also the charges of the railroad. Such pleas *ad misericordiam* cannot affect this court. Was it possibly the notion that the supposed or pretended wrongs of the "Kansas farmer" at the hands of the commission dealers or railroads would prompt this court to punish the stock-yards company? If not, why were these utterly immaterial suggestions made?

The only true basis for the regulation of compensation, in the majority of cases affecting private property, must be the reasonable value of the service actually rendered, and not the return upon the money invested in the particular business or the value of the property. This element of the value of the service itself will, as a general rule, be found to furnish the simplest and fairest standard, approximately just to the public and to the property owner; and it will involve less difficulty and embarrassment to the courts than any other rule. The appellants also submit that the customary stock-yards charges ought to be presumably reasonable in view of their long continuance and general currency and of the settled rule at common law that such

charges had to be reasonable. Of course, if in the case at bar stock-yards were not heretofore subject to the operation and limitation of this common law rule, because not impressed with a so-called public interest, then the legislature had no power to interfere with private property and a private business.

If, for example, there were two stock-yards in Kansas, one whose plant was worth $5,000,000 because occupying valuable city property, and another whose plant was worth only $1,000,000, because occupying outlying property, could the "reasonable" charge of one be five times the charge of the other for the same service? Let us suppose that the Kansas City Stock-Yards were now about to be started for the first time, with a plant costing $5,000,000, without the adjoining packing houses, and with receipts at the beginning of only 167,000 head of live stock, as in 1871, or only 1,979,000 head as in 1883, instead of 5,471,000 head as in 1896, and that the company had the prospect of many years of risk, labor, expenditure and waiting before a large or paying business at customary rates could possibly be established. Would it not seem unreasonable for the company to charge one dollar a head upon cattle when all other yards charged twenty-five cents for the same service? Yet the excessive charge of one dollar would be necessary to pay even operating expenses. It would, however, be legally unreasonable and unjustifiable and extortionate, because it would be excessive having regard to the *value of the service*, determined in great measure by the fact that in all other stock-yards in the United States the charge was only twenty-five cents for exactly the same service under substantially similar conditions, and this had been the customary charge up to that time. The courts would say that those who

invested in such an enterprise would have to take the risk and loss consequent upon the delay necessary to build up a sufficient trade to make the enterprise fairly remunerative under reasonable and customary charges. They would say that the owner must now bear the loss because, if successful in establishing a large market and trade, he would reap the corresponding profit. That this would be the law ought to be self-evident. Would it be fair and just to permit the legislature, as soon as success was assured, to step in and take away this profit merely because a certain class of the public want to reduce profits?

Or, to put it conversely, we may suppose that the business of the stock-yards company decreases one-half by reason of the establishment of competitive yards in or adjacent to Kansas City, or in other localities perhaps better suited to meet changed business conditions. In such a case, the expense of operation would continue the same, and it would be necessary for the stock-yards to double or treble its charge in order to create a fair return upon the reasonable value of the property. But surely the company could not, simply to make up the decrease in receipts and loss of trade, increase its charge above the customary charge of other yards and the reasonable value of the service.

The very large tract of land, more than 125 acres, now used by the company for stock-yards purposes, may in the future double or treble in value. The present value of the land, surrounded as it is by a great city becoming more and more populous, may increase many-fold. A fair return upon the increased value of the property might require a great increase in the charges. An increase of $1,000 per lot would add over $1,250,000 to the value of the property, an increase of $5,000 per lot would add

$7,500,000 to the actual value. Would a court hold that, merely because the property had thus increased in value, the stock-yards company could increase the customary charge for the service rendered? The court would say, as was said in *Munn* v. *Illinois*, that, if the property became so valuable, the owner might "withdraw his grant by discontinuing the use; but, so long as he maintained the use, he must submit" to the requirement of reasonable charges. A just decision would then be that the primary consideration was not what the owner of the stock-yards should earn on the present value of his investment, but rather the reasonableness in itself of the customary charge irrespective of the result upon net earnings. *Covington &c. Turnpike Co.* v. *Sandford*, 164 U. S. 578, 596.

A large proportion of the yardage charge is for personal services, as distinguished from and in addition to the use of physical property, to wit: the labor incident to the handling, distribution, care, driving, weighing, watering and delivering live stock consigned to these yards. It was the purpose of the Legislature not only to regulate the "yarding," but, as the statute itself says, the "driving, watering and weighing of stock," and to prescribe an arbitrary charge for all these personal services as well as for the use of property. A fair return on the property or capital invested does not embrace compensation for these additional personal services, which, ordinarily, the owner of live stock would have to perform for himself. The value of the property or capital invested cannot, therefore, be the sole factor in determining the reasonableness of rates in such a case, if, indeed, it affords an element in the determination of this question in any aspect, or assists at all in solving it.

These considerations should persuade that the contention of the appellants is sound, that the customary

charges are reasonable in themselves, as evidenced by similar charges for similar services in competitive markets, and that so long as the stock-yards company continues to make the customary charge, the public is not injured and the legislature cannot interfere.

The finding of the master is that the charges of the Kansas City Stock-Yards are identical or substantially the same as at twelve other yards, comprising all the large stock-yards of the country (p. 64). The proof is that there is no agreement among these yards in regard to charges and that there is keen competition among them. Of course, in the face of this proof, it cannot be reasonably suggested that the identity or similarity of charges is of itself sufficient to justify the suspicion that there must, of necessity, be some agreement. Take, for example, the familiar case of street railroads. As is well known, the fare in almost every city of the country is five cents. This is so, in many instances, by statutory provision, but also frequently without statutory provision or under statutes authorizing more than five cents. Would it not be preposterous to hold that because of the similarity of charge there must be an understanding or a combination among the street railroad companies fixing this charge? The fact simply is that we find a consensus of opinion as to the value of the service; the service rendered is similar in its nature in every state; the cost of rendering the service is approximately the same; the value of the service to those who ride is about the same in different localities. Under such circumstances, if the legislature should reduce to three cents (40 per cent.) the fare of a street railroad company that had been built originally on private property and which had not exercised any particular

franchise such as the power of eminent domain, would it not be proper for the street railroad company to show that the customary charge in other cities was five cents; and, in the absence of all proof to the contrary, would not such testimony be most persuasive in determining the reasonableness of the charge of five cents? On the other hand, if a street railroad company, which had been charging five cents, should increase its charge 40 per cent., or to seven cents, for the same ride, and in judicial proceedings it was sought to restrain it from so doing, on the ground that the increase of charge was unreasonable, would not proof of the customary charge in the past by that company and of the customary charge in other places for a similar service under substantially like conditions be most persuasive evidence in favor of the people using the street cars in the absence of any proof justifying the increase? Other instances observable in everyday life will readily suggest themselves, but it is unnecessary to go into detail. There is, therefore, nothing in the fact of the identity of charge among the thirteen large competing stock-yards of the country tending to suggest or establish any combination whatever.

It is submitted that the proof that the charge exacted by a carrier or warehouseman or innkeeper or stock-yards is the customary rate during many years for similar services under like conditions, should establish the reasonableness of such charge as matter of law *in the absence of all evidence to the contrary.* Evidence of the customary charge has been recognized from time immemorial as a proper basis for determining this question. In all other relations it is the basis of judicial decision: the value of services or property is always established in court by proof of customary charges. *Kock* v. *Emmerling*,

22 How. 69, 74; *Erben* v. *Lorillard*, 2 Keyes (N.Y.) 567, 572. It is the safest basis in the long run, particularly when it appears that the result is a profit not at all above what owners of other industrial property receive upon their investments.

In Gunning on Law of Tolls, the author says (pp. 61, 62):

> "It only remains in this place to consider what is a reasonable toll; and on this subject the books are singularly silent, the reports containing very few cases or *dicta* upon the point, and the text writers not laying down any general rule (and perhaps none can be laid down) respecting it. With regard to tolls due by prescription, and indeed in all cases in which they have been taken for a great length of time, the sum which has been in fact uniformly taken would, in all probability, be deemed a reasonable toll; unless it were *manifestly* disproportioned to the tollable article, or to the benefit which the buyer and seller derived from the privilege of using the fair or market.
>
> Long usage and acquiescence in one uniform payment for toll, is undoubtedly cogent evidence that it is reasonable.[1] . . . In an early case,[2] the corporation of Newcastle, as owners of the port there, claimed fivepence a chaldron on all coals exported. On a special verdict, it was contended that this was an unreasonable toll, the value of a chaldron of coals being only four shillings; but Lord Holt, C. J., said that as the value of the coal was not stated in the verdict, the Court could not intend that it was unreasonable."

In the case of the *Duke of Bedford* v. *Emmett*, (King's Bench, 1820), 3 B. & Ald. 366, it was held that the owner of a market might recover the tolls that were usually paid in any part of said market "if the usage has established a particular payment in any part."

In *Wright* v. *Bruister* (King's Bench, 1832), 4 Barn.

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[1] *Heddey* v. *Welhouse*, Cro. Eliz. 559.

[2] *Vinkerstone* v. *Ebden*, 1 Lord Raym. 384; 1 Salk 248; 5 Mod. 356; Carth. 357.

& Adol. 116, 117, involving the claim of a prescriptive right to take tolls of the market of Bishop Stortford, Parke, J., said that, as the jury had found that the toll was received in point of fact and that it had been received for a great length of time, the *onus* of showing that the toll was unreasonable was on the defendant, that the defendant had not shown this fact, and that the court, looking to the value of the commodity in respect of the sale for which the toll was received and the amount of toll itself, could not take upon itself to say that it was unreasonable, particularly in view of the case of *Heddey* v. *Welhouse*, Cro. Eliz. 559, where it was said that a penny, or even two pence, was a reasonable toll on the sale of a beast in a market. Taunton, J., said that the court could not say that a penny for toll on the sale of a pig was unreasonable in point of law; and Mr. Justice Patteson being of the same opinion, the rule was refused.

In *Shephard* v. *Payne* (1862), 12 C. B. N. S., 414, 431, Willes, J., said:

> "A fee need not be of a fixed and ascertained, but may be of a reasonable amount; and, exercising the power conferred upon us by the case, to draw inferences of fact, we may conclude, that, if the claim can be sustained in point of law, it was in fact for a reasonable fee. If so, then, looking to the amount established for similar services by other officers, and remembering what fees have been paid and received within the memory of us all in the Courts of Westminster Hall and at the Assizes, we think there can be little doubt that the fees in question, so far as amount is concerned, are in fact reasonable."

In *L. E. and St. L. R. R. Co.* v. *Wilson*, 119 Ind. 352, 358, the court said:

> "The law makes it the duty of every common carrier to receive and carry all goods, . . . and authorizes a reasonable reward to be charged for the service. The amount to be paid is, in a measure,

subject to the agreement of the parties; but, when the amount is not fixed by contract, the law implies that the carrier shall have a reasonable reward, *which is to be ascertained by the amount commonly, or customarily, paid for other like services. Johnson* v. *Pensacola, etc., R. R. Co.*, 16 Florida, 623; Angell Carriers, section 392; Lawson Contracts of Carriers, section 125."

In *Hopper* v. *Chicago, etc., R. R. Co.*, 91 Iowa, 639, it was held that evidence of charges by other companies for similar services might be admissible if the conditions were shown to be substantially the same. See, also, *Johnson* v. *Pensacola, etc., R. R. Co.*, 16 Florida, 623.

Speaking of the duty of common carriers at common law, Bronson, J., in *Cole* v. *Goodwin*, 19 Wend. 251, 261, said:

"It is agreed by all the books, that while he enjoys the privileges of a common carrier, there are certain duties pertaining to that office which he cannot escape in any form. In the first place, he is bound to receive passengers and goods, if he have room, and carry them for a reasonable reward, *which may be set down as the accustomed reward for like services.*"

Chancellor Kent also said of carriers (2 Com. 599):

"As they hold themselves to the world as common carriers for a reasonable compensation, they assume to do, and are bound to do, what is required of them in the course of their employment, if they have the requisite convenience to carry, and are offered a reasonable or *customary* price."

As bearing upon the view that the true test should be the value of the service in itself, reference may be made to the language of Mr. Justice Bradley in *Transportation Co.* v. *Parkersburg*, 107 U. S. 691, 699, viz.:

"It is also obvious that since a wharf is property, and wharfage is a charge or rent for its temporary use, the question whether the owner derives more or less revenue from it, or whether more or less than

the cost of building and maintaining it, or what disposition he makes of such revenue, can in no way concern those who make use of the wharf and are required to pay the regular charges therefor; provided, always, that the charges are reasonable and not exorbitant." Quoted with approval in *Ouachita Packet Co.* v. *Aiken*, 121 U. S. 444, 449.

And in *Canada Southern Railway Co.* v. *International Bridge Company*, 8 App. Cas. 723, 731, the English rule is vigorously expressed as follows by Lord Chancellor Selborne:

"It certainly appears to their Lordships that the principle must be, when reasonableness comes in question, not what profit it may be reasonable for a company to make, but what it is reasonable to charge to the person who is charged. That is the only thing he is concerned with. They do not say that the case may not be imagined of the results to a company being so enormously disproportionate to the money laid out upon the undertaking as to make that of itself possibly some evidence that the charge is unreasonable, with reference to the person against whom it is charged. But that is merely imaginary. Here we have got a perfectly reasonable scale of charges in everything which is to be regarded as material to the person against whom the charge is made. One of their Lordships asked counsel at the bar to point out which of these charges were unreasonable. It was not found possible to do so. In point of fact, every one of them seems to be, when examined with reference to the service rendered and the benefit to the person receiving that service, perfectly unexceptionable, according to any standard of reasonableness which can be suggested. That being so, it seems to their Lordships that it would be a very extraordinary thing indeed, unless the legislature had expressly said so, to hold that the persons using the bridge could claim a right to take the whole accounts of the company, to dissect their capital account, and to dissect their income account, to allow this item and disallow that, and, after manipulating the accounts in their own

way, to ask a court to say that the persons who have projected such an undertaking as this, who have encountered all the original risks of executing it, who are still subject to the risks which from natural and other causes every such undertaking is subject to, and who may possibly, as in the case alluded to by the learned judge in the court below, the case of the Tay Bridge, have the whole thing swept away in a moment, are to be regarded as making unreasonable charges, not because it is otherwise than fair for the railway company using the bridge to pay those charges, but because the bridge company gets a dividend which is alleged to amount, at the utmost, to 15 per cent. Their Lordships can hardly characterize that argument as anything less than preposterous."

Before the passage of the act of March 3, 1897, the legal right of the owner of stock-yards was clearly to receive a reasonable sum for any service rendered, even though the property had become impressed with a public interest. This right, whether we call it the liberty of the citizen or a property right, was of incalculable value. It assured him, under the shield of the Federal Constitution, the legitimate fruits of his labor and capital, and subjected him only to the risks of all commercial ventures. He cannot be deprived of that right, nor can its beneficial enjoyment be substantially impaired by legislation, of which the only legitimate object should be the prescribing of reasonable charges. Whether or not we regard the legislative function as embracing the power to prescribe reasonable rates or to prevent unreasonable, extortionate and arbitrary charges—whatever language we employ—the substance of the right of the citizen must remain inviolable and protected against impairment. That is the essence of the American system of constitutional guaranties. It is also interesting to note here that there is no provision of the Kansas constitution which expressly protects the

liberty or property of citizens from impairment or encroachment. There is no provision requiring due process of law, found in almost every other state constitution. The Fourteenth Amendment alone seems to afford protection in that state against arbitrary or confiscatory legislation.

Now, the matter in dispute in the case at bar is the reasonableness of the charge fixed by the legislature; and we may confidently assume that that is a judicial question and that the controversy is to be determined after judicial investigation, "under the forms and with the machinery provided by the wisdom of successive ages for the investigation judicially of the truth of a matter in controversy."

A mere legislative enactment, in such a case as we are considering, cannot make that reasonable which without the enactment would not be deemed reasonable according to the ordinary rules of courts of justice. This court has not intended to formulate any doctrine which would give such a weight to a legislative enactment as would, by way of presumption or otherwise, substantially impair the personal liberty or property rights of the citizen. If the charge of the owner of a stock-yard or warehouse or elevator is reasonable, having due regard to the market value of the service rendered and the customary charge elsewhere, it cannot be made unreasonable simply because the legislature, acting on behalf of the class using the property for its convenience and profit, has seen fit to attempt to reduce the charge nearly one-half, for the special benefit of that class. The power to prescribe what shall *prima facie* be deemed a reasonable charge in such a case as is before the court may be within the domain of legislative interference as a matter of evidence or court prac-

tice; but more than that is "without its operative effect," to borrow the phrase of *Munn* v. *Illinois*. Neither the owner of cattle nor the proprietor of a stock-yard or cattle exchange or stable can be concluded, or his rights materially affected or impaired, by a mere legislative enactment. *Louisville & N. R. Co.* v. *Railroad Commission of Tennessee*, 19 Fed. Rep. 679, 695; see, also, discussion in *Vanhorne's Lessee* v. *Dorrance*, 2 Dallas, 304, 312; *Monongahela Navigat'n Co.* v. *United States*, 148 U. S. 312, 327; *People* v. *Cannon*, 139 N.Y. 32, 43. Otherwise, a matter properly of judicial cognizance would find itself practically prejudged and determined by the legislature, which would act both as legislator and as judge.

Let us consider and test the question of reasonableness in two practical aspects. The owner of the stock-yards, there being no legislation, sues to recover a charge of twenty-five cents per head of cattle. The defense under the common law is that the business is impressed with a public interest, that the charge is unreasonable, and that fifteen cents is enough. It is shown, as was shown by the case at bar, that twenty-five cents has been the rate of charge for many years, that it is the rate for similar services at all other stock-yards, that experts, familiar with the business and fully qualified, testify that the charge is reasonable and fair in view of the service actually rendered, that an immense capital is invested and at hazard in the accommodations furnished, that a market and demand have been created at the cost and by the efforts of the owner of the stock-yards, that, by reason of these conditions and the artificial demand thereby created, the shipper realizes for his cattle more than he would get anywhere else, that the increased price thus obtained is very much

more than sufficient to pay all charges for yardage and feeding, that no yardage is charged unless a satisfactory sale is made, that the owner of the stock-yards is responsible as insurer and renders many services in driving, taking care of the cattle, billing, guaranteeing numbers and weights, shipping, etc., and that the whole charge for yardage and for the responsibility and labor in taking care of the cattle, including driving, putting in pens, transferring, facilitating advantageous sale, watering, weighing, guaranteeing, etc., was only about one-half of one per cent. of the price realized for the cattle (p. 147). And, as here, no other evidence is offered. Would not any court of justice under such circumstances hold that the customary charge or market value obtaining for years at all yards was reasonable? The legislature, however, interferes, and, taking sides in the matter with the class using the yards, ordains a maximum rate of fifteen cents, and makes it a crime to exact more. The owner of the stock-yards challenges the reasonableness of the rate prescribed by the legislature, and, asserting it is arbitrary, brings his rights before a court of justice for determination, and produces exactly the same evidence which was conclusive in his favor when establishing the reasonableness of his charge unaffected by the attempted legislative interference or regulation. And, again, as here, no evidence is adduced to the contrary. Is it the law that, although the testimony would be ample and conclusive according to ordinary rules of evidence to establish the reasonableness of the charge in the case first stated, it is not sufficient to establish exactly the same *fact* or *conclusion* in the second case? If so, it must be because of a legislative enactment. Does the legislative fiat then change the nature of the question? Does the subject matter of the controversy become essentially different? If the

charge for a service rendered is judicially reasonable under one aspect, does it become unreasonable presumptively because so decreed by a legislature? In a word, is not reasonableness to be determined in both aspects by the same evidence and the same rules which, as Mr. Justice Blatchford said in the *Minnesota* case, have been provided and approved by "the wisdom of successive ages for the investigation judicially of the truth of a matter in controversy"?

At most the legislation merely creates a *prima facie* case against the property owner. But no rule of presumption should operate against him and no burden of proof should bear him under, or deprive him of relief. His substantial legal position and right should ultimately be the same as if there had been no enactment, and the cattle owner was seeking, without the support or cover or mask of an arbitrary act of the legislature, to use the yards without paying a reasonable charge or compensation.

If, as may well be the rule, there is a strong legal presumption in support of legislation with respect to tax laws from considerations of a wise public policy, and with respect to railroad rates also because of public policy, and likewise because of the reserved power to regulate, nevertheless, the true rule in the case of private businesses must be that there is no such presumption and that the property owner comes into court free to establish the justice of the issue according to ordinary rules of procedure, that in so doing his legal rights remain unimpaired and unprejudiced by legislative fiat, and that he is to establish the truth of his claim by the same substantive evidence as he would without legislative regulation. The province and prerogative of the judiciary remain unchanged. We may well concede that the legislative rates are to be treated as *prima*

facie reasonable as a rule of evidence requiring some testimony to overcome, but we submit that they have no more force; the enactment does not change or shift the burden of proof. Every lawyer knows that this *prima facie* effect will be practically of great value to the individual; it will compel the owner of the stock-yards or warehouse or elevator to produce evidence in the first place, which will be examined and scrutinized under the scorching test of adversary litigation; it will force such owner to prove the market value of the service, and to show that his charges are the customary rates, or, if more than the customary rates, the facts which justify the excess. But if the owner of the stock-yards or warehouse or elevator does produce testimony tending to establish the reasonableness of the charge, and there is nothing in opposition but the legislative enactment, then he should be entitled as theretofore to judgment. Otherwise, the bare enactment places him at a material and prejudicial disadvantage, which in most cases would turn the protection of the Constitution of the United States into a mere mockery. In *Reagan* v. *Farmers' Loan & Trust Co.*, 154 U. S. 362, 397, Mr. Justice Brewer said:

> "Yet it has always been recognized that, if a carrier attempted to charge a shipper an unreasonable sum, the courts had jurisdiction to inquire into that matter and to award to the shipper any amount exacted from him in excess of a reasonable rate; and also in a reverse case to render judgment in favor of the carrier for the amount found to be a reasonable charge. *The province of the courts is not changed, nor the limit of judicial inquiry altered, because the legislature instead of the carrier prescribes the rates.*"

In *Smyth* v. *Ames*, 169 U. S. 466, 527, Mr. Justice Harlan said:

> "The idea that any legislature, state or Federal, can conclusively determine for the people and for the

courts that what it enacts in the form of law, or what it authorizes its agents to do, is consistent with the fundamental law, is in opposition to the theory of our institutions. The duty rests upon all courts, Federal and state, when their jurisdiction is properly invoked, to see to it that no right secured by the supreme law of the land is impaired or destroyed by legislation. This function and duty of the judiciary distinguishes the American system from all other systems of government. The perpetuity of our institutions and the liberty which is enjoyed under them depend, in no small degree, upon the power given the judiciary to declare null and void all legislation that is clearly repugnant to the supreme law of the land."

In *Chicago &c. Railway Co.* v. *Minnesota*, 134 U. S. 418, 458, Mr. Justice Blatchford said:

"The question of the reasonableness of a rate of charge for transportation by a railroad company, involving as it does the element of reasonableness both as regards the company and as regards the public, is eminently a question for judicial investigation, requiring due process of law for its determination. If the company is deprived of the power of charging reasonable rates for the use of its property, and such deprivation takes place in the absence of an investigation by judicial machinery, it is deprived of the lawful use of its property, and thus, in substance and effect, of the property itself, without due process of law and in violation of the Constitution of the United States; and in so far as it is thus deprived, while other persons are permitted to receive reasonable profits upon their invested capital, the company is deprived of the equal protection of the laws."

The primary function of all government is the protection of the property and of the personal rights and liberties of the individual. Governments are created for that fundamental purpose. Under the American system, if there is a presumption, it is always in favor of the individual and of liberty of action. Indeed, when a court

finds that the legislature for the first time seeks to regulate a business under the exercise of the so-called police power, and to radically reduce *customary* charges under the pretense that the public good so requires, it ought to be made to appear that the legislation is justified by some necessity, and that the extent of the interference with private business is reasonably necessary to prevent extortionate or unjust charges. The most vital principle in the creation of our system of constitutional governments is the maintenance of clear lines of separation between the legislative and judicial branches; and the strict adherence to this separation of the different branches is the essence of a republican form of government. We appreciate the disinclination of the courts to interfere with the legislative branch. Yet we must also recognize that the legislature should not be permitted to encroach, however slightly, upon the legitimate functions and prerogatives of the judicial branch. There is far more danger that the legislature will encroach upon the judicial branch than there is that the judiciary will ever encroach upon the legislative branch. As Webster so well said:

> "It cannot be denied, that one great object of written constitutions is to keep the departments of government as distinct as possible; and for this purpose to impose restraints designed to have that effect. And it is equally true, that there is no department on which it is more necessary to impose restraints than the legislature. The tendency of things is almost always to augment the power of that department, in its relation to the judiciary."[1]

The constitution of Kansas and the fundamental prin-

[1] Webster in "Independence of the Judiciary," Little, Brown & Co.'s edition of works, vol. 3, p. 29; see also Ford's "Federalist," No. 49, pp. 334 *et seq.*

ciple of our system of republican government vest the legislative power and functions in the legislature and the judicial power and functions in the courts. We know how anxious this court ever is not to encroach upon the legislative branch; but we also know that any encroachment upon the judicial branch, however slight, will be checked by that tribunal to which, above all others, is entrusted the duty of preserving constitutional government. If this class of legislation is to be construed as establishing more than *prima facie* evidence of reasonableness and as creating a presumption, more or less effective and binding upon the courts, and a heavier burden of proof than was previously required and practically prohibitive of relief, then it is an interference with the judicial function in a matter which this court has declared is essentially for judicial investigation and adjudication. It is true that every presumption should favor the constitutionality of an act of the legislature when we are dealing with the taxing power and other governmental functions, which in their nature and from sound grounds of public policy should be subject to interference from the judiciary only in clear cases of abuse of power. It may be so in the regulation of tolls of public corporations. But it should not be so in the case of essentially private property. Above all constitutions, as well as prior to all constitutions, are the individual rights of liberty and property, which have never been parted with—those "equal and inalienable natural rights" which the constitution of Kansas declares are possessed by the people, which the Fourteenth Amendment sought to protect against the assaults of temporary majorities, and in the support and defense of which it is the duty of the judiciary to be jealous against encroachment.

In the ever-to-be-remembered oration in the *Dartmouth College Case*, Webster said (4 Wheat. 518, 579, 581, 582):

> "If the constitution be not altogether waste paper, it has restrained the power of the legislature in these particulars. If it has any meaning, it is, that the legislature shall pass no act directly and manifestly impairing private property, and private privileges. It shall not judge, by *act*. It shall not decide, by *act*. It shall not deprive, by *act*. But it shall leave all these things to be tried and adjudged by the law of the land. . . Everything which may pass under the form of an enactment, is not, therefore, to be considered the law of the land. . . Such a strange construction would render constitutional provisions of the highest importance completely inoperative and void. It would tend directly to establish the union of all powers in the legislature. There would be no general permanent law for courts to administer, or for men to live under. The administration of justice would be an empty form, an idle ceremony. Judges would sit to execute legislative judgments and decrees; not to declare the law, or to administer the justice of the country."

IV.

The effect of the statute on the gross and net earnings of the stock-yards company.

But if the value in itself of the service rendered and the reasonableness of the customary charge are not to be controlling in this class of cases, and if the return upon the value of the property is to be the sole test, or an element in determining reasonableness, then the inquiry is presented as to the effect of the legislation upon the company's net earnings, and if the reduction be radical, as to whether or not such a reduction will leave enough net income to afford a fair, just and reasonable compensation on the true value of the property. Of course, the return on the value of the property employed may frequently be an important element in determining the reasonableness of a charge.

The customary rates before the legislation in question were 25 cents per head of cattle, 10 cents for calves, 8 cents for hogs, and 5 cents for sheep (p. 64). The statute reduced these charges to 15 cents for cattle, 8 cents for calves, 6 cents for hogs and 4 cents for sheep (p. 41), that is to say, from twenty to forty per cent., and reduced the net earnings of the business from $476,974.08 to $176,322.31, a reduction of $300,651.77 or over 63 per cent. under the contention of the appellants, or from $476,974.08 to $345,906.96, a reduction of $131,067.12, or 28 per cent. under the contention of the Attorney-General of Kansas. The latter's contention rests wholly upon the ground that the stock yards had no right to deduct from the gross earnings the sum of $169,584.65 representing necessary betterments and improvements or to deduct any allowance for depreciation and necessary wear and tear. The whole position of the defense is grounded upon the proposition that this industrial company was bound as matter of law to capitalize these improvements, which did not tend to increase earnings and which only equalled a fair allowance for depreciation.

It is true that the company, prior to 1896, had capitalized most of its extensions or improvements. The contention below (see answer, p. 885) was, therefore, that, as the company had capitalized extensions or improvements in the past, it must continue to do so in the future. Under this theory, the company must keep on year after year increasing its capital stock for whatever improvements or extensions the necessities of the business might require, whether or not this construction added to earning capacity. If not willing, *or if unable by the sale of stock or bonds*, to capitalize improvements necessary in order to retain the business

and market at Kansas City, the company must cease improving its facilities, and progress is to stop. It must at once occur to the court that if any such company could, as between itself and the public, indefinitely capitalize improvements or betterments and not provide for them out of earnings, or make any allowance for depreciation of the old plant, it would, in the course of time, inevitably become grossly over-capitalized. As in the case at bar, a great deal of capital is constantly sunk and disappears in the construction of improvements to take the place of the original plant (p. 219), and to represent this old plant frequently nothing remains. It must also occur to every fair mind that in such a case we should find the state of Kansas insisting that betterments and improvements in the past which it was known would not increase the earning capacity and which took the place of existing plant should have been paid for out of earnings and ought not to have been capitalized and the additional burden imposed upon the public. It would, of course, be insisted that the stockholders must either pay for these improvements out of income, or put their hands in their own pockets; but that the public could not be compelled to go on indefinitely paying increased charges in order to furnish returns upon such expenditures, especially if the company had made no allowance in its accounts for depreciation.

In assigning the reasons for dismissing the bill of complaint, Thayer, C. J., does not discuss the point of depreciation, although Foster, D. J., did so in denying the motion for a temporary injunction. The latter adverted to the fact that the master had made no report on the subject, and then proceeded to estimate a depreciation of only $75,400, based upon the assumption that, as to some of the improve-

ments, two per cent. would represent the depreciation, which is without support of competent evidence in the record (record, pp. 871, 872; 82 Fed. Rep. 849) and utterly conflicting with common experience and common sense.

Thayer, J., was likewise in error in his conclusion concerning the $169,584.65 disbursed in 1896, as shown by the stipulation of the parties (pp. 89–91). He remarked that "a very large part of the sum last mentioned [$169,584.65]—all of it, in fact, except about $6,000—was expended in building new structures and making permanent improvements" (p. 945). An examination of the disbursements of 1896 for "operation, maintenance and extension of improvements," shows that the following amounts were expended in what can fairly and reasonably be said to be either repairs or renewals (pp. 89–91):

For vault in the building	$386 08
For washroom in horse stable, to take the place of the old one	220 77
Labor and painting on horse stable	33 92
Office-rooms in building	831 12
Taking out old front of barn, and rebuilding it.	1,541 18
Additional windows in transit-house	56 13
For moving old barn and fitting it up	600 00
One scale-house and scales in the sheep division.	1,557 19
For rebuilding a worn-out train office	700 00
New drainage pipes, taking the place of former drainage system	2,416 09
For paving, to take the place of worn-out paving.	44,492 07
Total	$52,834 55

In the place of only $6,000 being expended in repairs and renewals, there was thus actually expended in 1896, $52,834.55, in addition to the ordinary current repairs, which were $32,209.22 (p. 70).

Now, it ought to go without saying, and we must assume that a court of equity will recognize, that in the operation of a plant such as the stock-yards, and notwithstanding repairs, there is a constant wearing out of the buildings, fences, pens, pavements, etc., from natural causes and wear and tear, and a constant necessity for replacing old with new, and that in estimating the profits of operation an allowance must necessarily be made for this wear and tear and depreciation and renewal. This view as to depreciation and that improvements may be properly charged against income is fully supported by the authorities. *Reagan* v. *Farmers' Loan & Trust Co.*, 154 U. S. 362, 407; *San Diego Land & Town Co.* v. *City of National City*, 74 Fed. Rep. 79, 83, 87; 174 U. S. 739, 757; *Little Miami, &c., R. R. Co.* v. *United States*, 108 U. S. 277, 278; *Union Pacific R. R. Co.* v. *United States*, 99 U. S. 402, 420; *United States* v. *Central Pacific R'd Co.*, 138 U. S. 84, 86; *Southern Pac. Co.* v. *Board of Railroad Com'rs*, 78 Fed. Rep. 236, 266; *Metropolitan Trust Co.* v. *Houston & T. C. R. Co.*, 90 Fed. Rep. 683, 690; *Whittaker* v. *Amwell National Bank*, 52 N. J. Eq. 400, 404; *Glasier* v. *Rolls*, L. R. 42 Ch. Div. 436, 453; *Dent* v. *London Tramways Co.*, L. R. 16 Ch. Div. 344, 353; *Davison* v. *Gillies*, L. R. 16 Ch. Div. 347; *Reg.* v. *Grand Junction R. Co.*, 4 Ad. & E. N. S. 18, 41; *Regina* v. *Railway Co.*, 15 Ad. & E. N. S. 313, 363; *Regina* v. *Railway Co.*, 15 Ad. & E. N. S. 1085, 1088; *Corry* v. *The Londonderry and Enniskillen Railway Company*, 29 Beavan, 263, 273.

The following quotation from Greene on "Corporation Finance" (1897; pp. 83, 114), is singularly applicable to the facts of this case, and will show how one of the best known auditors in the country would treat such a situation

as we find in the case of the Kansas City stock-yards. The language is so much in point on this question of depreciation that an unusually long extract may be permissible. He says:

> "One of the perplexing things in the financial management of a large manufacturing or trading company, is the treatment of the expenditures for the care of the plant. A depreciation account in some shape must be kept by every company or firm in business. The real estate may decline in value, and in any case, in any progressing concern, money will be required to be spent each year to adjust the buildings more perfectly to the requirements of the business, and yet these adjustments may not add anything to the salable value of the property, and should not, therefore, be added in the accounts to the company's investment in real estate. In like manner, machinery will wear out, and is always subject to the danger of new inventions, which may render the old machinery practically worthless. It is not easy to foresee when a new outfit will be in part or in whole required, though experience soon places a limit to the number of years in which a given set of machinery may be useful. The proper course in these cases is always the conservative one. The corporation should estimate the probabilities of depreciation always against itself, and set aside yearly such sums from its profits as will suffice to renew so much of the plant as may be expected to wear out or to become useless in a given time. Unless this depreciation fund is carefully thought out and its separation from profits rigidly insisted upon, the shareholders of the corporation and perhaps the bondholders may in the course of years find that their securities cover a property of little or no business value. If certain sums are not set aside to meet this depreciation, and if for this reason dividends are paid larger than would otherwise be the case, to the extent to which this is carried the returns received by the shareholders are not dividends but their capital returned to them in piecemeal. These depreciation sums should be real and not merely bookkeeping liabilities of the company to itself.

"Modern corporation accounting requires that in theory a sharp line of distinction should be drawn between outlays which may be considered a part of the regular working expenses, and those which are chargeable to an increased investment in the business. In theory the former should be deducted from the gross earnings before the net revenue is determined, while the latter may be met by an increased issue of bonds or shares. There is no doubt of the correctness of this principal in general, but in its practical application it is subject to great modification. English shareholders in American corporations usually insist upon such a system of accounting as divides the expenditures strictly according to this rule; and such indeed is the general practice in Great Britain. By charging to capital every item small and large which could by any possibility be construed to be a betterment, the British railways have increased their capitalization until they are dependent for a continuance of interest payments on good traffics year by year. Thus far no harm has come to these railways from this policy, because the fluctuations in the volume of their traffics have been comparatively slight.

"But in the United States more caution must be observed in this matter. From the very nature of the case, business of all kinds in a developing country must be more subject to changes in profitableness than in older countries. The very character of the American people, energetic and progressive, makes business all the more liable to such fluctuations. Bad years follow good years in every line of American industry, although differences are less violent in those trades which are the longest established and among those companies which have been in operation long enough to render their business comparatively stable. The principle, therefore, of charging all so-called betterments to capital and meeting the cost from the sale of bonds or shares, requires modification according to the circumstances of each particular company. The more fluctuating the volume of business has been or is likely to be, the more important is it that in one form or another a part of the profits in prosperous years should be withheld from the shareholders and

put into the property or set aside for its renewal. To those who wish a working principle to distinguish the proper items to be charged to capital account in the actual management of American corporations, railway and other, the following definition is suggested: No additions to the property either to the real estate or to the machinery (if a manufacturing company), or to the roadbed and track (if a railway company), should be considered betterments and charged to capital, unless they increase the productivity or earning capacity of the plant. Under this rule the purchase of additional equipment for a railway would be an expenditure which could conservatively be met by the issue of bonds or equipment notes, because such purchases would enable a larger volume of traffic to be handled; on the other hand, the replacement of a wooden bridge by an iron one would not be a proper charge to capital, under our definition, unless it was one of a series of expenditures deliberately resolved upon in order that heavier trains could be run and a larger volume of traffic handled, thus increasing the revenues of the company—an increase which our theory demands should be clearly seen to be possible after the various amounts of capital set aside for this purpose had been spent. The same rule might be applied to corporations other than railways; the safe course is to charge against revenues (possibly through the profit and loss account) the cost of all additions to the property which do not increase the output or decrease the cost of production. Yet any rule or any principle in so delicate a matter can properly be applied in each case only after a careful study of all the circumstances, including the business of past years and the prospect for the future. . . .

Every active concern must in some shape keep a depreciation account, to which shall be charged certain sums for renewal of machinery, etc., before profits are divided. If this is not done, the company will at the end find itself without plant and without money."

This rule of the practical man of affairs ought to be sanctioned and approved by this court.

In *Union Pacific R. R. Co.* v. *United States*, 99 U. S.

402, the second paragraph of the syllabus is as follows:

> "'Net earnings,' within the meaning of the law, are ascertained by deducting from gross earnings all ordinary expenses of organization and of operating the road, and expenditures *bona fide* made in improvements, and paid out of earnings, and not by the issue of bonds or stock."

And on pp. 421–422, Mr. Justice Bradley said:

> "*We think that the true interest of the Government, in this case, is the same as that of the stockholders; and will be subserved by encouraging a liberal application of the earnings to the improvement of the works.* . . . We are disposed to agree, therefore, with the judge who delivered the concurring opinion in the court below, that the 27th item of expenditure, as stated in the table of expenses in the 18th finding, entitled 'expenditures for station buildings, shops, etc.,' is a charge that may properly be made against earnings, since, as the fact is, such expenditures were actually paid therefrom, and were not carried to capital account."

In the case of *United States* v. *Kan. Pac. Railway Co.*, 99 U. S. 455, 459, in reference to the expenditures to be charged against gross earnings before reaching net income, the court said:

> "The former [referring to the government] insists that certain items should be excluded from the account which are claimed by the latter [meaning the railroad] to be legitimate. These items are designated in Schedule C, annexed to the findings of the court below, and are as follows:—
>
> "*First.* 'Depreciation account, or expense not charged up.' This is explained to be the amount necessary to put the road in proper repair, but which was not actually expended for that purpose. We are clearly of the opinion that it is not a proper charge. Only such expenditures as are actually made can with any propriety be claimed as a deduction from earnings.
>
> "*Secondly.* 'Construction account, or improvements and additions to track,' etc. This item, according to

what we have said in the Union Pacific Railroad case, ought to be allowed.

"*Thirdly.* 'Equipment account, or replacing and rebuilding rolling stock, machinery,' etc. This item should also be allowed as an expenditure properly chargeable to the earnings of the road, when actually paid out of the earnings and not raised by the issue of bonds or stock.

"*Fourthly.* 'Real estate purchased for depot grounds, etc., and expenses of same.' This item is a proper charge if actually paid out of the earnings, and not raised by bonds or stock."

In *Southern Pacific R. R. Co.* v. *Board of Railroad Commissioners*, 78 Fed. Rep. 236, the circuit court held as stated in the seventeenth paragraph of the syllabus:

"*Held*, further, that in ascertaining the cost of operating a railroad, with reference to determining the reasonableness of rates, the expenses of operation are not to be strictly limited to the cost of running trains, excluding all betterments, but the cost of reasonable renewals and improvements of roadbed, track and equipment should be included in the operating expenses."

In the case of *Davison* v. *Gillies*, reported in note to *Dent* v. *London Tramways Company*, 16 Chancery Division, 344, 347, 348, Jessel, M. R., said:

"Then I have to consider the question, What are net profits? A tramway company lay down a new tramway. Of course the ordinary wear and tear of the rails and sleepers, and so on, causes a sum of money to be required from year to year in repairs. It may or may not be desirable to do the repairs all at once; but if at the end of the first year the line of tramway is still in so good a state of repair that it requires nothing to be laid out on it for repairs in that year, still before you can ascertain the net profits, a sum of money ought to be set aside as representing the amount in which the wear and tear of the line has, I may say, so far depreciated it in value as that that sum will be required for the next year or next two years.

> "Take the case of a warehouse. Supposing a warehouse-keeper, having a new warehouse, should find at the end of the year that he had no occasion to expend money in repairs, but thought that, by reason of the usual wear and tear of the warehouse, it was a thousand pounds worse than it was at the beginning of the year, he would set aside one thousand pounds for a repair or renewal or depreciation fund before he estimated any profits; because, although that sum is not required to be paid in that year, still it is the sum of money which is lost, so to say, out of capital, and which must be replaced. I should think no commercial man would doubt that this is the right course—that he must not calculate net profits until he has provided for all the ordinary repairs and wear and tear occasioned by his business."

If, according to the contention of the Attorney-General of Kansas, improvements and renewals must be capitalized year after year irrespective of the effect upon earnings, then it is submitted that, before we can arrive at any just conclusion as to current profits, there must, in common fairness, be an allowance for depreciation of at least ten per cent. of the *cost* of the present plant, which was shown to be $1,593,038.07 (p. 350). Therefore, in the case at bar, whether we deduct improvements from income and write off nothing for depreciation, or capitalize improvements and allow a fair amount for depreciation, it will follow that about the sum in question ought to have been deducted from the gross earnings of the property in 1896 before the actual net earnings could have been justly and truly determined.

But, so the allegation of the answer was (p. 885) and so the argument seemed to run on the prior hearing, the company capitalized in the past whenever it added extensions or improvements, and it cannot stop now; it must continue year after year the practice of issuing new stock

and increasing its capital even though this course would ordinarily be imprudent or improper, and must inevitably in time lead to gross over-capitalization. This should hardly be a fair argument for the Attorney-General to make. The true interests of the people of Kansas, or, to quote his brief, the "Kansas farmer," are that the capitalization of such a company, upon which capitalization some return must be earned, shall be kept as low and upon as conservative a basis as practicable. With what patience would a court listen to an argument that a manufacturing corporation, whose earnings had reached their probable maximum, should capitalize every betterment and improvement, and issue bonds or stock for new machinery or fixtures; or even to an argument that a railroad company, which is a far more permanent business, must capitalize year after year all expenditures for renewals and increased weight of rails, for improvement of existing road-bed, for station houses rebuilt in brick or stone to replace wooden structures, etc., etc., notwithstanding the fact that the managers believed that there was a constant depreciation from wear and tear equivalent to these improvements and that the company had reached its maximum earning capacity?

Can it be doubted that, under such circumstances, the stock-yards company would not have been justified in selling new stock for funds or expenditures which could not of themselves earn a dividend, or in selling bonds to procure funds upon which the business would not earn the interest? Can there be any reasonable doubt that this court will sanction and approve the making of these necessary improvements and renewals out of earnings if only about equal to a fair provision to cover inevitable depreciation?

The facts and figures set forth in the statement of fact

ought to establish beyond cavil the propriety and truth of the position taken by the managers of the stock-yards company in respect of the necessary improvements and betterments made in 1896, namely, that they could not consistently issue and sell new stock or bonds to provide the funds therefor, and that they could properly charge the improvements against earnings, because they fairly equaled the actual depreciation.

A different view would lead to results which sound policy ought to forbid. The court will not declare that, under the circumstances disclosed by this record, the stock-yards company must necessarily go on indefinitely capitalizing such expenditures, and make no allowance for depreciation. It would be difficult to imagine a more objectionable and dangerous system of corporate financing in the case of a company in which the state or the public claims an interest to prevent excessive capitalization and extortionate charges.

Expressions in some of the reported decisions may be found to the effect that improvements and betterments in the case of railroads may or should be provided for out of capital stock or bonds. A careful examination will disclose that none of these decisions presented facts similar to those now before the court. Some of these cases turned upon peculiar provisions securing the rights of income bondholders or preferred stockholders, or the claims of the government, as in the Pacific Railroad cases. But, in every one of the rate cases where this point has been presented, the courts have uniformly ruled not only that allowance for depreciation was proper, but also that betterments and improvements could fairly and equitably be charged against income.

The fact that the improvements in question were

charged to a construction account or were called permanent improvements is immaterial. The controlling element is that the expenditures were necessary in order to keep the stock-yards in serviceable condition, and this fact is undisputed. Certainly the mere title under which these expenditures are once stated in books of account is not sufficient to overthrow the facts so fully and clearly shown, namely, that the improvements were necessary, that they were about what will be required yearly, that they only equal the annual depreciation of the plant, that they do not increase the earnings or earning capacity, and that the business in all probability has reached its maximum. As Mr. Justice Brewer said in *Reagan* v. *Farmers' Loan & Trust Co.*, 154 U. S. 362, 407:

> "Those are facts whose significance cannot be destroyed by any mere manner of bookkeeping or classification of expenditures."

It is, therefore, submitted that, in determining the net profits which the property earned in 1896, the improvements made during that year and amounting to $169,584.65, about equaling the annual depreciation, or to state it more simply, at least ten per cent. on cost as the depreciation of the plant, viz., $159,303, must, in fairness to the stock-yards company, be paid out of the earnings and treated as a fit and proper deduction from the gross income. If this be true, then it necessarily follows that the net earnings for the year 1896 would be about $476,974.08, and that the conceded result of the statutory schedule would be to reduce these net earnings to $176,322.31, a reduction of over sixty-three per cent. In view of this radical effect upon the income of the stock-yards company, it is not surprising that both the judges below should have confessed that they thought the reduction "radical," and that the issues were balanced with doubt.

As Mr. Justice Harlan said, quoting from the opinion of the circuit court in *Smyth* v. *Ames*, 169 U. S. 466, 542:

> "It must be remembered that these roads are competing roads; that competition tends to a reduction of rates—sometimes, as the history of the country has shown, below that which affords any remuneration to those who own the property. Can it be possible that any business so carried on can suffer a reduction of 29½ per cent. in its receipts without ruin? What would any business man, engaged in any business of a private character, think of a compulsory reduction of his receipts to the amount of 29½ per cent.?"

The following tables may be of assistance to the court in considering the result in percentages in four aspects, viz.:

(*a*) Without deducting anything for construction or depreciation;

(*b*) Deducting $75,400 for depreciation upon the basis suggested by Foster, D. J. (pp. 871–872), which would be only 5 per cent. upon the value of improvements and allowing nothing for additional improvements or betterments;

(*c*) Deducting $169,584.65, amount actually expended for improvements in 1896, and allowing nothing for depreciation; and,

(*d*) Deducting $159,303 for depreciation, being ten per cent. of the cost of the plant (pp. 121, 225, 350, 443, 590) and allowing nothing for improvements or betterments.

I.

Master's finding of property used for stock-yards purposes, as set forth in findings XLIII, XLIV, XLV and XLVI (p. 77).....$5,388,003 25

made up as follows:

Valuation of stock-yards lands as bare land without improvements	$3,600,626 00	
Valuation of improvements	1,480,000 00	
Valuation of supplies, wagons, horses, feed, etc.	307,377 25	
		$5,388,003 25

(*a*) Net income at statutory rates, without deducting anything for construction or depreciation would be $345,906.96, or equal to 6.4 per cent. on above valuation.

(*b*) Net income after deducting $75,400 for depreciation would be $270,506.96, or equal to 5 per cent.

(*c*) Net income after deducting $169,584.65 expended for improvements would be $176,322.31 or equal to 3.2 per cent.

(*d*) Net income after deducting ten per cent. for depreciation, $159,303, would be $186,603.96, or equal to 3.4 per cent.

2.

Master's finding of property used for stock-yards purposes (p. 77)		$5,388,003 25
Add property erroneously excluded, as set forth in finding XLI. (pp. 75–76)	1,200,000 00	
Add property used in mule and horse department (p. 72)	430,420 00	
Add expenditure for packing plants (p. 61)	817,944 28	
Making total valuation of		$7,836,367 53

(*a*) Net income at statutory rates, without deducting anything for construction or depreciation, would be $345,906.96, or equal to 4.4 per cent. on above valuation.

(*b*) Net income after deducting $75,400 for depreciation would be $270,506.96, or equal to 3.4 per cent.

(*c*) Net income after deducting $169,584.65 expended for improvements would be $176,322.31, or equal to 2.2 per cent.

(*d*) Net income after deducting ten per cent. for depreciation, $159,303 would be $186,603.96 or 2.3 per cent.

3.

Fair present valuation of lands for stock-yards purposes (pp. 192, 330, 331), at least	$5,600,000 00	
Master's valuation of improvements (p. 77)	1,480,000 00	
Master's valuation of supplies, wagons, horses, feed, etc. (p. 77)	307,377 25	
Horse and mule department (p. 72)	430,420 00	
Spent for packing plants (p. 61)	817,944 28	
Working capital, consisting of cash and credits (p. 76)	400,000 00	
Good-will on master's valuation (p. 78)	780,000 00	
Making a total valuation of		$8,815,741 53

(*a*) Net income at statutory rates, without deducting for construction or depreciation, would be $345,906.96, or equal to 3.9 per cent. on above valuation.

(*b*) Net income after deducting $75,400 for depreciation would be $270,506.96, or equal to 3.1 per cent.

(*c*) Net income after deducting $169,584.65 for improvements would be $176,322.31, or equal to 2 per cent.

(*d*) Net income after deducting ten per cent. for depreciation, $159,303, would be $186,603.96, or equal to 2.1 per cent.

V.

The fair present value of the stock-yards property.

The Attorney-General of Kansas candidly conceded in the brief heretofore filed that neither the actual cost of the property nor the amount of the original investment was controlling as a basis of valuation, that the property had greatly increased in value, and that the stock-yards company should be permitted to earn a reasonable interest upon the present value of its property. As stated on pages 76–77 of his brief:

> " We do not ask that the Kansas City Stock-Yards Company be permitted to earn only a reasonable percentage of profit upon the money which has been actually invested in its business or upon the actual cost of its property. *We recognize the fact that this property has greatly increased in value since the organization of the stock-yards, and we are willing that the company be permitted to earn a reasonable interest upon the value of its property.*"

This broad concession, embodying as it does the true and just rule of law, greatly simplified and narrowed the discussion. Only two points, therefore, remain to be discussed upon this point, namely: (1) what is a reasonable interest upon money invested in an industrial enterprise of this nature, and (2) what is the true and fair present value of the property as shown by the testimony. It is important to call attention to the fact that the Attorney-General did not attempt, in any part of his discussion, to challenge the correctness of the following statement of Thayer, C. J., below (record, p. 945; 82 Fed. Rep. at p. 856):

> " Conceding, as we must, that the legislation complained of was radical in its nature and effect, that it reduced the company's income about fifty per cent., *and that it prevents it from realizing on the capital invested in its plant such a per cent. as is ordinarily realized on capital invested in other mercantile and business enterprises*," *etc.*

1.

As to what is reasonable interest or compensation on such an investment.

As we have seen, the Attorney-General stated in his brief that " we are willing that the company be permitted to earn a reasonable interest upon the value of its property " (defendant's brief on original argument, p. 77). The rate which would be deemed a reasonable interest is not stated, but presumably it would be at least six per cent.,

because the defense strives to show that the statutory rates afford at least that return. Common knowledge justifies the assertion here that six per cent. is an insufficient return on money risked in industrial enterprises, which in this country are so liable to damage or destruction by changes of markets and railroad centres and conditions. Such a return would seldom tempt investors to risk their capital in a venture like this which in 1871 must have seemed very doubtful. Success has attended the investment in this case, but failure might have swamped the capital of the owners. The risk was wholly theirs. Under such circumstances, ought not the profit to be more than the current rate of interest of money loaned on security? But even that, this legislation denies.

The appellants do not contend that owners of stock-yards are entitled as matter of fixed right to earn at least six per cent. upon the value of their property and capital invested in the business, irrespective of the reasonableness of the charge made to the public. But they do urge that in all fairness and justice they are entitled to receive the fair value of money in the state of Kansas so long as the charges are customary and in themselves reasonable for the service rendered. They urge that they assumed and still assume the risk of the market continuing at Kansas City. They concede that, if competition should cut down their receipts, they cannot increase their charges beyond what is a reasonable charge for the services they render. They simply ask the fair value of money so invested in industrial enterprises "as it stood in the markets of the world, and not as prescribed by an act of the legislature," so long as they do not make unreasonable charges to those who use their yards.

The business and the receipts at the yards have been

built up by the industry and energy of the managers and owners of the stock-yards and by the risk of their capital. The stock-yards would never have been established nor a dollar invested in such an uncertain and speculative venture (pp. 354, 442, 458, 459) if the owners had conceived it possible that, as soon as they had built up a large trade and successful business, the legislature would step in on behalf of their customers and limit their profits below the rate at which they could lend money on security without practical risk. Indeed, if the owners of the stock-yards were tomorrow seeking to purchase land and establish new yards and to borrow money for that purpose in Kansas, they would have to pay at least six per cent., and probably as high as from eight to ten per cent., for the use of the money. In that event, their earnings under the statutory rates would be less than their fixed charges. The question cannot be changed in its substance because the Kansas City Stock-Yards Company has been so well and conservatively managed that it has not a dollar of bonded debt, and has from time to time secured all the money it needed either by cash contributions from the stockholders or by the investment in the enterprise of profits as they accrued.

The value of money, or, in other words, its earning power in Kansas, may be appreciated by reference to the appendices annexed to this brief, taken from official reports and state records, which show, for example, that in the year 1897 the state banks paying dividends averaged nearly 8 per cent. per annum (appendix C); that the private banks paying dividends averaged over 18 per cent. per annum, and distributed an amount sufficient to make more than 8½ per cent. on all the capital so employed in the whole state (appendix D); and that the current

rates of interest on municipal bonds was at least 7 and frequently as high as 10 per cent. (appendix E). This is true of a class of investments regarded as conservative, and not speculative, while any attempt to establish and build up a cattle market must necessarily be an extremely hazardous speculation.

The statutes of Kansas provide that the rate of interest for the use of money shall be six per cent. in the absence of an agreement fixing a different rate, and that the maximum shall be ten per cent. (Vol. 2, Gen. Stat. 1897, ch. 116, p. 596). This provision is the expression of the thought and estimate of the state itself as to the minimum value of money and as to what justice requires for the use of it. *Reagan* v. *Farmers' Loan & Trust Co.*, 154 U. S. 362, 411. It is the legal measure of the value of the use, not only of money, but of property generally, and is a fair and just basis in most cases. *Loudon* v. *Taxing District*, 104 U. S. 771, 774; *Spalding* v. *Mason*, 161 U. S. 375, 396. But it is not a fair or just basis in a speculative venture. In Kansas, all loans upon the security of real or personal property earn from six to ten per cent. when there is practically no risk for the lender. The rate of six per cent. is seldom accepted, and ten per cent. is frequently stipulated for, particularly in industrial ventures. As we have seen, the most conservative investments in the state, such as municipal bonds, bear from seven to ten per cent. interest. It is, of course, a matter of common knowledge that the reasonable expectation of profit in industrial ventures is always more than the rate obtained for money loaned on security, for the obvious reason that the risk is greater. The court below conceded that the rates prescribed by the legislature in this case prevent the stock-yards company "from realizing

on the capital invested in its plant such a per cent. as is ordinarily realized on capital invested in other mercantile and business enterprises." Is it not then a gross injustice under such circumstances for a legislature to say that the stock-yards company is not entitled to reap the legitimate reward of a successful industrial venture? Why is it not entitled to earn what is "ordinarily realized on capital invested in other mercantile and business enterprises," as against those who risked nothing and now insist upon their right to use the yards for their own convenience and profit? Will it not be held to be substantial justice—just to the class of the public using the yards for their individual profit as well as to the owner of the stock-yards—that such owner shall be entitled to earn at least the maximum allowed by the state statute when money is loaned upon security? If this be so, the court must hold that, as the legislative rates afford, in no reasonable aspect of the proof contained in the record, anything like six per cent., the statute violates the property rights of the owners of these stock-yards.

As Mr. Justice Brewer said in *Reagan* v. *Farmers' Loan & Trust Co.*, 154 U. S. 362, 410:

> "The equal protection of the laws—the spirit of common justice—forbids that one class should by law be compelled to suffer loss that others may make gain. If the State were to seek to acquire the title to these roads, under its power of eminent domain, is there any doubt that constitutional provisions would require the payment to the corporation of just compensation, that compensation *being the value of the property as it stood in the markets of the world, and not as prescribed by an act of the legislature?* Is it any less a departure from the obligations of justice to seek to take not the title but the use for the public benefit at less than its market value?"

Moreover, it will be a very disastrous day for the industries of this country, if this court shall, in the case at bar, adjudicate that even six per cent. is a sufficient profit to those who risk immense sums in endeavoring to establish new industries and who have, in case of failure, absolutely no recourse against any one, and who, in bad years and narrow markets and depressed conditions, must go without any return of profit upon their investment. If the court shall reach the conclusion that, in the case of private property and industrial ventures, a reasonable percentage upon the actual value of the property is the *limit* of the reward or profit which the investor can ever hope to reap except at the will or caprice or with the permission of a legislature acting on behalf of the class of the public who have found it to their individual profit and advantage to use private property, then it is submitted that the wiser decision will be not to declare any fixed rate of interest or profit, but rather that if the rates prescribed prevent such a concern as the Kansas City Stock-Yards Company "from realizing on the capital invested in its plant such a per cent. as is ordinarily realized on capital invested in other mercantile and business enterprises," the act is unconstitutional because arbitrarily interfering with the rights of private property and of individual liberty. The court has consistently declined to fix rates or to declare how much interest or profit may be reasonable in the case of public corporations, leaving the operation of practical experience and litigation to ultimately evolve some sound rule by means of inclusion and exclusion. That should likewise be the conclusion in the class of private industrial enterprises presented by the case at bar. The decision of such a case as this must necessarily act as a precedent in

numerous other cases of legislative interference with private property, and any intimation that legislatures may invade private property and interfere to limit to say six per cent. the legitimate profits of success, would open to legislative activity and meddling opportunities of immeasurable injury and injustice to industrial enterprises.

2.

As to the present value of the property of the stock-yards company.

In order to avoid useless discussion upon the elements of valuation or upon mere definitions, we may consider the statement made by the Attorney-General upon this question. He stated as follows (defendant's brief on original argument, p. 27):

> "That the value of the real estate is to be determined by considering it as a body of naked land upon the general market, subject to purchase and sale for all purposes for which a demand may exist—for *stock-yards*, for railroads, for packing-houses, for manufacturing and mercantile purposes, with all the advantages which may accrue to it in consequence of its location near the corn belt as well as the cattle ranges of the country, in the heart of a great city, surrounded by all the railroads, packing-houses, manufacturing and mercantile plants there existing and in operation, and by reason of the limited area of land in the vicinity available for such purposes."

This being the basis conceded by the Attorney-General, we assert that none of the witnesses called by the defense testified that they estimated the value of the property for *stock-yards* purposes or included the elements which should have been properly considered in estimating the true value. Therefore, the estimates of none of the witnesses called on behalf of the Attorney-General are to be taken or relied upon (see *supra* p. 33 and appendix B to this brief).

It is assumed that if this property has increased in value more than the finding of the master, this court will allow the full measure of that increased value, for that is the legal right as well as the just equity of every property owner. This actual present value, even if the property had cost nothing or had been donated, would clearly be the basis of valuation for every other purpose, including taxation and condemnation proceedings, and would be at once recognized by every fair-minded business man and every impartial court as the just value—just for the purpose of barter and sale, just for the purpose of taxation, just for the purpose of condemnation to accommodate some superior public use, and just for every other purpose. The property has greatly increased in value from its original cost; but are not the owners entitled to the full benefit of that increase? Is it not simple fair play that such a concern, whether owned by an individual or a private corporation, shall be allowed to reap the legitimate profit of the sagacity of its managers and the risk of its capital? Surely, it would not be just for a court to consider for a minute the *cost* when that is no longer the *actual value*. Will not a court of equity, in determining value, allow to such an owner something more than the bare value of the naked land without regard to its use and of the materials used in the structures? Would not the basis of actual cost of present reproduction be obviously an unfair valuation as between man and man? Does it become a justifiable basis of valuation merely because the legislature sees fit to interfere for the benefit of the class using the market?

In view of the enormous changes in conditions at Kansas City set forth in the statement of facts, it would, indeed, have been preposterous if the Attorney-

General had ventured to urge upon this court that the land of the Kansas City Stock-Yards Company, more than one-third of which (forty acres) was purchased as far back as 1871, and fully three-quarters of which was purchased prior to 1880, had not greatly increased in value.

The record clearly shows that all the witnesses testifying on behalf of the Attorney-General valued the land owned by the stock-yards company on the hypothesis that it was naked or bare land, divested of all improvements. The master valued it on this basis (p. 77). None of these witnesses attempted in any manner to value the improvements, nor did any of them attempt to testify as to the value of the property in its then present condition, although some of these witnesses conceded that the property was in a most available situation and especially adapted for stock-yards purposes by reason of its singular location amidst surrounding railroad systems and packing and other manufacturing plants. Yet none of them estimated the fair and just value of the property for its most available and valuable purpose (pp. 619, 621, 632, 637, 645, 683, 684, 696, 697; see also *supra*, p. 33, and appendix B).

If the court shall hold that this property can, with any degree of fairness and justice to its owners, be valued on the basis of naked land and without regard to its special value for stock-yards purposes, it may well be conceded that there is some evidence in the testimony of the witnesses called by the Attorney-General tending to sustain the master's finding of $3,600,626 as the present value of the bare land used for stock-yards purposes, although the preponderance of qualified testimony showed a larger value; but if, on the contrary, the true and only just basis in such a case is (1) the value of the property as it stands with

its improvements, in other words, the value to the stock-yards company itself (*Monongahela Navigat'n Co.* v. *United States*, 148 U. S. 312, 343), or (2) the value of the land itself with due regard to any particular use to which it is especially adapted, then the master's estimates and all the testimony on behalf of the defense must of necessity be disregarded, and the court will determine from the testimony of the complainants' witnesses the true and just value.

It cannot be that, in a court of justice seeking to adjudicate what is fair and just as between the owner and the public, every element of value which would govern any conservative business man is to be discarded, and the mere cost of reproduction is to control. There can be no question as to the special availability of this property for stock-yard purposes, surrounded as it is by railroads and packing houses. That it is so available was practically conceded; and that fact necessarily increases its value. For that purpose, it is worth more than for any other purpose. It cannot be that its value for the purposes of this controversy is to be determined without regard to the one controlling and essential feature which would determine its real, actual or fair value in every other conceivable relation, including taxation or condemnation. If the legislature had determined to establish a public stock-yards at Kansas City at the expense of the taxpayers of the state, but for the particular benefit of owners of live stock, and the property of the Kansas City company had been selected for condemnation, can there be the slightest doubt that the state would have to pay the value of the land and improvements for stock-yards purposes?

We may again suppose that a legislature was about to regulate the charges of a hotel in Kansas City,

situated as conveniently as the Arlington Hotel is situated in Washington. In ascertaining the value of the property, would it be just to discard its value for hotel purposes and value it as naked land plus the value of the improvements? Would this basis be fair even in a condemnation proceeding? Would not the owner be entitled to show the special value of the property and its large earning capacity for hotel purposes? Would it be held that the only values to be considered in a court of justice were the value of the bare or naked land and the cost of reproduction? How preposterous it would sound for counsel to argue that the hotel owner could buy cheaper land a mile or two away and build a hotel there! Take the case of the large dry-goods concern at Kansas City, the Emery-Bird-Thayer Dry Goods Company (situated at Walnut and Eleventh Streets, record, pp. 662–663, 697). It occupies a large building, which is located upon land valued at several hundred thousand dollars an acre. If that land were about to be condemned for a railroad station, would not the owners be entitled to show that the property was especially valuable in that locality for the retail dry-goods business? It would obviously be grossly unjust to compel the owners to accept compensation upon the basis of bare land and cost of rebuilding. How unreasonable it would sound for counsel to argue that the owners could secure an equal amount of land a mile or two away from the business centre, and there build an equally large store!

Yet in the case at bar, the Attorney-General of Kansas suggested below, and may urge again, that the owners of the Kansas City stock-yards might move elsewhere, where they could secure cheaper land, but where, of course, they never could secure the advantage of adjacent packing

plants and railroad terminals without the expenditure of many millions of dollars.

The rule which obtains in condemnation proceedings under the exercise of the power of eminent domain as to what should be the elements in estimating the value of property may assist by way of analogy, although there are many equities entitling us to more consideration than is usually accorded a property owner where, under condemnation proceedings, his property must be taken for a necessary public use. (See the suggestion of Mr. Justice Brewer in *Ames* v. *Union Pac. Ry. Co.*, 64 Fed. Rep. 165, 178.) Yet, the court below refused to accord even what would be just in the case of condemnation proceedings.

In *Boom Co.* v. *Patterson*, 98 U. S. 403, it appeared that the boom company had the power of eminent domain and was seeking to condemn parts of two islands. The land in question, if assessed simply according to its value as bare land, aside from any consideration of its value for boom purposes, was worth only $300; but, in view of its adaptability for those particular purposes, the jury found a further and additional value of $9,058.33, making the total allowance $9,358.33. The trial court reduced the verdict to $5,500, and the question argued in this court was as to the basis upon which the compensation was to be estimated. Mr. Justice Field, delivering the unanimous opinion of the court and reviewing the authorities, used the following language (p. 407):

> "In determining the value of land appropriated for public purposes, the same considerations are to be regarded as in a sale of property between private parties. The inquiry in such cases must be what is the property worth in the market, viewed not merely with reference to the uses to which it is at the time applied, but with reference to the uses to which it is plainly

adapted; that is to say, what is it worth from its availability for valuable uses? Property is not to be deemed worthless because the owner allows it to go to waste, or to be regarded as valueless because he is unable to put it to any use. Others may be able to use it, and make it subserve the necessities or conveniences of life. Its capability of being made thus available gives it a market value which can be readily estimated.

"So many and varied are the circumstances to be taken into account in determining the value of property condemned for public purposes, that it is perhaps impossible to formulate a rule to govern its appraisement in all cases. Exceptional circumstances will modify the most carefully guarded rule; but, as a general thing, we should say that the compensation to the owner is to be estimated by reference to the uses for which the property is suitable, having regard to the existing business or wants of the community, or such as may be reasonably expected in the immediate future."

In the case of *National Waterworks Co.* v. *Kansas City*, 62 Fed. Rep. 853, the circuit court was called upon to investigate and determine the principle upon which a water company should be compensated when its property was taken by the city under the reserved contract right to do so at the expiration of the franchise. The argument advanced on behalf of the city was that the value should be limited to the cost of reproducing the plant. In the course of a very carefully prepared opinion, Mr. Justice Brewer said (p. 865):

"It is obvious that the mere cost of purchasing the land, constructing the buildings, putting in the machinery, and laying the pipes in the streets—in other words, the cost of reproduction—does not give the value of the property as it is to-day. A completed system of water-works, such as the company has, without a single connection between the pipes in the streets and the buildings of the city, would be a property of much less value than that system con-

nected, as it is, with so many buildings, and earning, in consequence thereof, the money which it does earn. The fact that it is a system in operation, not only with a capacity to supply the city, but actually supplying many buildings in the city,—not only with a capacity to earn, but actually earning,—makes it true that 'the fair and equitable value' is something in excess of the cost of reproduction. The fact that the company does not own the connections between the pipes in the streets and the buildings—such connections being the property of the individual property owners—does not militate against the proposition last stated, for who would care to buy, or at least give a large price for, a waterworks system without a single connection between the pipes in the streets and the buildings adjacent? Such a system would be a dead structure, rather than a living and going business. The additional value created by the fact of many connections with buildings, with actual supply and actual earnings, is not represented by the mere cost of making such connections. Such connections are not compulsory, but depend upon the will of the property owners, and are secured only by efforts on the part of the owners of the waterworks, and inducements held out therefor. The city, by this purchase, steps into possession of a waterworks plant,—not merely a completed system for bringing water to the city, and distributing it through pipes placed in the streets, but a system already earning a large income by virtue of having secured connections between the pipes in the streets and a multitude of private buildings. It steps into possession of a property which not only has the ability to earn, but is in fact earning."

The above case was never appealed, and the city acquiesced in the finding of the court.

See, also, on the proposition that the value of the land to the defendant company for stock-yards purposes should have been allowed, *Monongahela Navigat'n Co.* v. *United States*, 148 U. S. 312, 326, 328; *Grant* v. *East & West R. Co.*, 54 Fed. Rep. 569, 576; *Dupuis et al.* v. *C. & N. W. Ry. Co.*, 115 Ill. 97, 100; *C. P. & St. L.*

Ry. Co. v. *Eaton*, 136 Ill. 9, 14; *Snouffer* v. *Chicago & Northwestern Ry. Co.*, 105 Iowa, 681; *Drury* v. *Midland Railroad*, 127 Mass. 571, 582; *Columbia Delaware Bridge Co.* v. *Geisse*, 38 N. J. Law 39, 42; *Railroad Co.* v. *Patterson*, 107 Pa. St. 461, 464; *Montgomery Co.* v. *Bridge Co.*, 110 Pa. St. 54, 59; *Mifflin Bridge Co.* v. *Juniata Co.*, 144 Pa. St. 365, 367; *Miller* v. *Windsor Water Co.*, 148 Pa. St. 429, 439; *Rippe* v. *Chicago, Dubuque & Minnesota R. Co.*, 23 Minn. 18, 23; *King* v. *Minneapolis Union Ry. Co.*, 32 Minn. 224, 225; *The Mo. Pac. Ry. Co.* v. *Porter*, 112 Mo. 361, 369; *Webster* v. *The Kansas City & S. Ry. Co.*, 116 Mo. 114, 119, 120; *San Diego Land etc. Co.* v. *Neale*, 78 Cal. 69, 71.

It is, therefore, submitted that the testimony of the complainants' witnesses, who alone valued the property for stock-yards purposes, must be accepted, and that their minimum estimates fairly establish at least $5,600,000 as the value of the bare land without improvements (pp. 191, 192, 330, 331, 344).

There are several items which were disallowed by the master from his estimates of value of the capital invested in this business. These items are discussed in the statement of facts, and the relatively greater importance of other points compels us to rest upon that statement. But as to the expenditures for subsidizing packing plants, amounting to $817,944, a few words may be added.

The results have demonstrated the wisdom and success of the policy of subsidizing these packing industries and inducing the construction of packing plants. Is it not fair and just that this money expended in order to create a

market, as much for the benefit of the owners of live stock using the yards as of the owners of the yards themselves, shall be considered in determining the amount upon which the stock-yards company is entitled to a fair return? Of course, in any other transaction in life, this necessary outlay would at once be recognized as a legitimate capital expenditure and as having greatly increased the permanent value of the enterprise and property. Does it not constitute a fair element and a just equity in determining the values as between those who use the yards and the owners of stock-yards? There can be no reasonable doubt that as matter of law such expenditures out of the capital of a corporation are proper, particularly when it is shown that they have resulted advantageously. Nor can it be doubted that the courts would treat such an investment of capital as property subject to taxation and not "moonshine."

In considering what the patrons of the yards should rightly pay, the appellants submit that a court of equity will allow for all reasonable expenditures to bring to the yards the buyers, without whose presence the market itself would be worthless to the owners of live stock. How strong is the equity when it appears that the fruits of this policy are to realize for the live stock owner more than he can obtain at any other yard, and to benefit the class using the yards at least $1,500,000 per annum in better prices than are obtainable at other yards (p. 74). It would be a most unjust result if the live stock owners are to use the yards and profit by these expenditures, and yet are to be free to refuse to contribute anything towards the expense of a necessary outlay which has benefited them so materially.

As Mr. Justice Brewer said in *Adams Express Company* v. *Ohio*, 166 U. S. 185, 222:

> "What a mockery of substantial justice it would be for a corporation, whose property is worth to its stockholders for the purposes of income and sale $16,800,000, to be adjudged liable for taxation upon only one-fourth of that amount. The value which property bears in the market, the amount for which its stock can be bought and sold, is the real value. Business men do not pay cash for property in moonshine or dreamland. They buy and pay for that which is of value in its power to produce income, or for purposes of sale."

So, in the case at bar, what a mockery it would be to hold that, although the market value of the stock has ranged always above par, and most of the time at a premium of from fifteen to forty per cent. for every purpose of income and sale in the markets, representing a market value of $8,400,000 to $10,300,000 (pp. 314, 319, 354, 440, 453, 471), nevertheless, it must shrink to about 73 per cent. of par, or $5,388,003.25, the moment the state sees fit to interfere for the benefit of the class using the yards. That this market value of the capital stock would be a just basis of valuation for taxation in Kansas, see *Ryan* v. *Com'rs of Leavenworth Co.*, 30 Kans. 185, 189. See also *Adams Express Co.* v. *Ohio*, 166 U. S. 185, 220, and *Porter et al.* v. *R., R. I. & St. L. R. R. Co.*, 76 Ill. 561, 588.

3.

Summary.

We may now summarize the argument, so as to show the investment in the enterprise upon the master's basis of valuation and upon the basis of the fair present value for stock-yard purposes.

As to the master's basis of valuation:

1.	Master's valuation of stock-yards land as bare land without improvements (p. 77).....	$3,600,626 00
2.	Omission of parcels used for dumping manure and offal (pp. 75, 76).....	126,140 00
3.	Master's valuation of improvements *after deducting depreciation* (p. 77)	1,480,000 00
4.	Master's valuation of supplies, feed, &c. (p. 77).....	307,377 25
5.	Working capital, consisting of cash and credits (p. 76).....	400,000 00
6.	Expenditure for packing plants (p. 61)	817,944 28
		$6,732,087 53

But, if we take the fair present value of the land for stock-yards purposes, the result would be:

1.	Valuation of land for stock-yards purposes, at least.....	$5,600,000 00
2.	Omission of parcels used for dumping manure and offal	126,140 00
3.	Master's valuation of improvements...	1,480,000 00
4.	Master's valuation of supplies, feed, &c.	307,377 25
5.	Working capital, consisting of cash and credits.....	400,000 00
6.	Expenditures for packing plants.....	817,944 28
		$8,731,461 53

If, however, the valuation be determined by the fair value of the plant in its present condition as an entirety or unit of operation or by the market value of the stock, these figures would be increased to the minimum of the complain-

ants' witnesses—namely, $9,500,000 (pp. 314, 319, 354, 440, 453, 471), which might be made up as follows:

1.	Valuation of land for stock-yards purposes as testified to by Mr. Morse (pp. 192, 330, 331, 344) and exceeded by many witnesses.....	$5,685,240 00
2.	Master's valuation of improvements...	1,480,000 00
3.	Master's valuation of supplies, feed, &c.	307,377 25
4.	Working capital, consisting of cash and credits.....	400,000 00
5.	Expenditure for packing plants.....	817,944 28
6.	Good-will on master's valuation (p. 78)	780,000 00
		$9,470,561 53

These showings would be still more favorable to the appellants if all the property which the stock-yards company owns were included. It is a hard rule which would deny it a return upon property which was purchased for future use in the business and exclude it simply because it does not earn anything as yet. So also as to the horse and mule department. The Attorney-General insists upon deducting the cost of the horse and mule department (brief on original argument, p. 74). Any reasonable and fair business man would at once recognize that accommodations for horses and mules are necessary for any stock-yards, because farmers ship all kinds of live stock; yet, as this department is not affected by the charges and produces little profit on the actual investment, it was thrown out of consideration by the master and court below. This is as unfair as if the legislation had omitted to regulate the rate for sheep or calves, and it were to be held then that the sheep or calf department should be disregarded if it

did not produce much profit. Of course, this claim as to the horse and mule department would never have been hinted at if that branch of the business had shown a substantial profit.

CONCLUSION.

For the foregoing reasons, it is submitted that the Kansas statute in question should be declared in conflict with the Fourteenth Amendment in that its provisions deny to the owners of the stock-yards property at Kansas City the equal protection of the laws by imposing regulations and burdens not applicable to all alike and in that it deprives them of property and liberty without due process of law by attempting to deprive them of the right to earn a reasonable compensation for services rendered to those who may use the yards for their individual convenience and profit and of the right to earn a reasonable compensation or interest upon the fair present value of the property used in this stock-yards business.

Washington, January, 1901.

ALBERT H. HORTON,
WILLIAM D. GUTHRIE,
B. P. WAGGENER,
Of counsel for appellants.

APPENDIX A.

The tables of the master are not correct and fail to accurately summarize the testimony. The following may therefore be of aid to the court. It is carefully based upon the testimony in the record, and starts from 1884, when the new corporation was organized with a capital stock of $1,990,000 issued for property worth at least that amount. These figures as to profits are taken because they are testified to by the Attorney-General's own expert accountant (pp. 742, 745, 746).

Year.	Capital stock issued.	Profits.	Cash dividends paid.	Percentage of dividend paid.	Stock issued at par for additional cash actually paid in since 1884.	Stock dividends representing undistributed net profits invested and capitalized.	Stock dividends representing increased value of lands.	Stock issued at par to Armour & Co. instead of $500,000 for packing plant.
1884...	$1,990,000.00	.....	$119,391.00	6				
1885...	1,990,000.00	.....	149,250.00	7				
1886...	1,990,000.00	.....	119,400.00	6				
1887...	1,990,000.00	.....	150,600.00	7½	$535,000.00	$456,933.00	$1,058,067.00	
1888...	4,040,000.00	.....	282,800.00	7				
1889..	4,040,000.00	.....	323,200.00	8				
1890...	4,040,000.00	.....	323,200.00	8	900.00	404,000.00		
1891...	4,444,900.00	.....	311,143.00	7				
1892...	4,444,900.00	.....	370,592.00	8	.....	.....	.....	$500,000.00
1893...	4,944,900.00	.....	296,694.00	6	55,100.00			
1894...	5,000,000.00	.....	451,133.50	9	1,667,100.00	268,100.00		
1895..	6,935,200.00	.....	554,816.00	8				
1896...	7,368,650.00	$486,226.50*	429,160.50	6	.....	433,450.00		
Total...	.....	.....	$3,881,380.00	.....	$2,258,100.00	$1,562,483.00	$1,058,067.00	$500,000.00

*After deducting improvements, $169,584.65.

APPENDIX B.

EXTRACTS FROM TESTIMONY OF WITNESSES CALLED BY DEFENDANT ATTORNEY-GENERAL BOYLE AS TO VALUE OF LANDS.

E. S. MERRILL (pp. 605 *et seq.*):

"A. (p. 618). When I was asked to put a price on this, this was vacant land without anything on it; it was unplatted and vacant land; I put a valuation on it in that shape. Now, you want me to say how much it is worth after it is platted, been improved, and business established; all its surroundings established, which will make property valuable, if there is any value in the property. Now, I have put that price on the land and say it is perfectly vacant just as it was left by nature.

BY MR. BOYLE (p. 619): And in the market for sale?

A. If you are going to improve the property and its surroundings, that is an entirely different thing; I will work on it with you, but that is not cross-examination on values.

Q. Now, then, in making up your valuation with reference to the tract marked E, you consider that as naked-acre property without any improvements and without any business on it at all?

A. Yes, sir.

Q. That is the fact, is it?

A. Yes, sir.

Q. (p. 621). Then, as I understand your testimony, Mr. Merrill, you are not testifying about the value of the property as it stands to-day in its present condition. Is that the fact?

A. Not improved property.

Q. You are not testifying about the value of the tract E as it stands to-day?

A. Not improved property.

Q. You can answer that question yes or no. You are not testifying about the value of tract E as it stands to-day?

A. No.

Q. I call your attention to the tract C and ask you to state to the special master what is your best judgment as to the value of that property as it stands in its present condition to-day?

A. I don't know.

Q. Then when you testify about the value of the property marked C you do not testify about its actual value as it stands to-day, do you?

A. No, sir.

Q. (p. 622). Do you know what the present actual value of the tract marked B is; just as it stands to-day?

A. No, sir."

C. D. PARKER (p. 629 *et seq.*):

"Q. (p. 632). In placing the valuations on these tracts A, B, C, D, and E did you take into consideration the use to which this land is being put by the stock-yards company?

A. No, sir; we took into consideration the prices of property adjacent to the stock-yards, together with the surroundings.

Q. (p. 633). Where else in that vicinity could they find any such a body of land?

A. There is no such property, except west of the stock-yards, that is available right near that point for such purposes. . . .

Q. Suppose they went in there to condemn 25 acres and you sat on the jury—

A. It would not be practicable; it could not be done.

Q. (p. 634). They could not buy it for any price that would be within reason, could they?

A. No, sir.

Q. (p. 636). And if another stock-yards company should come in, do you think it could procure as desirable a location in the bottoms?

A. I don't think it could.

Q. That being the case, Mr. Parker, am I right in concluding that in your judgment the present location of the Kansas City Stock-Yards is peculiarly well adapted for their purposes?

A. With the surroundings; yes, sir.

Q. (p. 645). Now, state, if you can, what is the actual present value of the land for stock-yards purposes.

A. I don't know, Mr. Hite."

E. F. ALLEN (pp. 657 *et seq.*):

"Q. (p. 666). In making your estimate of values you were not influenced by the value of the use to which the lands were being put by the company?

A. No, sir.

Q. Not at all?

A. No, sir.

Q. (p. 670). Now, assume that the Kansas City Stock-Yards people have been prosperous, would you say, Mr. Allen, that their proximity to the packing-houses and their proximity to the railroad terminals was an element of their prosperity?

A. Oh, yes; that enters into it.

Q. Is that such an element of prosperity as would be destroyed by the removal of the yards two miles from their present location? I will not—destroyed, but impaired.

A. It would greatly impair it, I should judge.

Q. The fact is, to get the idea clearly, that the present location of the stock-yards, everything considered, is one of the best that they could have?

A. Very attractive location, I would judge; of course, I am not familiar with their business.

Q. In a general way, that is true?

A. Yes, sir.

Q. Considering all the questions that you have been asked and the answers that you have made, what, in your opinion, is the value of this property that you valued to the stock-yards company?

A. I don't know."

R. E. CABLE (pp. 678 *et seq.*):

"Q. (p. 683). What, in your opinion, is that tract E worth just as it stands to-day?

A. For general purposes or the purposes for which it is being used?

Q. For the purposes for which it is being used.

A. Certainly I could not answer that question.

Q. You do not know?

A. No, sir.

Q. I call your attention to the tract B. What is that worth as it stands there to-day for the purposes for which it is being used?

A. To the stock-yards company?

Q. Yes.

BY MR. BOYLE: With all of the improvements on it?

BY MR. HITE: Yes, sir; just as it stands to-day.

A. I certainly don't know.

Q. (p. 689). What do you mean by general purposes?

A. For drug stores, groceries, saloons, or any other business or for residences; any business you choose to consider.

Q. Wouldn't it be worth the prices we have been considering for packing-house purposes?

A. I couldn't answer.

Q. Wouldn't it be worth that for railroad purposes?

A. That I don't know.

Q. (p. 690). Do you know what the value of the stock-yards property is to-day as it stands?

A. The land, you mean?

Q. (p. 691). The real estate belonging to the stock-yards company, just as it stands to-day.

A. No, sir; I have got my judgment on the value of the lands of the company. You mean the improvements, also?

Q. Just as I stated; just as you look at it to-day; do you know what is the value?

A. I don't; and no person living except the stock-yards people can answer that question.

Q. Would they know?

A. Yes; what it was worth to them.

Q. Wouldn't they know better than anybody else what it was worth?

Objection as improper cross-examination. Objection sustained.

Q. Then, as I understand you, the value which you have put upon this property is the value it would possess if it were a farm located down there in the bottoms?

A. Certainly."

C. W. WHITEHEAD (pp. 692 *et seq.*):

"Q. (p. 696). What is this property marked A, B, C, D, and E worth for stock-yards purposes?

A. I don't know.

Q. What is the value of this property for railroad purposes?

A. I don't know.

Q. What is the value of this property for packing-house purposes?

A. I don't know anything about the packing-house business. . . .

Q. What would be the value of that property for packing-house purposes?

A. I have stated, I believe, that I don't know.

Q. (p.697). These pieces of land concerning which you have testified are valuable for stock-yards purposes, are they not?

A. Yes, sir.

Q. Is it not a fact, Mr. Whitehead, that they are more valuable for stock-yards purposes than for any other purpose?

A. They are at present; yes, sir.

Q. (p. 699). I am excluding from consideration that period. In placing the values which you have given upon these tracts of land, Mr. Whitehead, you have excluded entirely, have you not, the use to which that land is being put at the present time?

A. In arriving at our values we tried to get the values of the property that was not affected by any railroad extension or stock-yards extension.

Q. You excluded both?

A. Yes, sir."

EXTRACTS SHOWING CHARACTER OF CROSS-EXAMINATION OF COMPLAINANT'S WITNESSES BY ATTORNEY-GENERAL BOYLE.

J. W. FERGUSON, an old resident of Kansas City, and an owner of property in the vicinity of the stock-yards (pp. 480, 487, 488):

"Q. (By ATTORNEY-GENERAL BOYLE.) That is true, but we will suppose that somebody was going to locate a stock-yards or a wholesale house, or anything else in here, and there was two or three hundred acres of land vacant down there?

A. You are going to start a new town, are you?

Q. No; I am not going to start a new town at all; I am just taking the conditions which exist there except that the stock-yards are gone. You are giving the value of this raw land.

A. Yes; that is right.

Q. You are taking away the stock-yards; there is no superstructure on the land, and you are going to fix a value on the land for business purposes, not because there is any business on it, but because it is available for business purposes, because it is in the middle of Kansas City. Take away these yards—

A. Take away Kansas City?

Q. No; I simply say here is a lot of raw land down there, two hundred acres of it. You say that land is valuable because the railroads want it, because the packing-houses want it, and because other kinds of industries want it; that is not only valuable for stock-yards purposes at seventy thousand dollars an acre, but it is valuable for these other purposes, is it not?

A. All these things go into it to make that value.

Q. Then take the stock-yards away and we will leave these other things there.

A. Take away the live-stock industry, is that the idea?

Q. No; I am not going to take away the live-stock industry; I am going to take away these yards, and then if anybody wants to come in there and locate yards or buy property for railroad terminals they can do so. Now, do you say that property would be worth in a body, as naked land, fifty or sixty thousand dollars an acre?

A. I appeal to the court that that is not a fair question.

Q. If you can answer it, do so.

A. I can answer it, but the point is here: I say these things are all a growth; the stock-yards is a growth, the manufacturing is a growth, the railroad industry is a growth; it has taken 25 years to make them. Now, you propose to wipe out all the advancement of 25 years and start back 25 years."

ALBERT MARTY testified at page 562:

"I said that the value, the purchase price, of that property twenty years ago—I presume it was more than twenty years ago—is no criterion as to its value to-day; property that I could have bought then for seventy-five dollars an acre is now selling for a thousand dollars a foot.

Q. (By ATTORNEY-GENERAL BOYLE.) Suppose these stock-yards were not there?

A. The very fact of the stock-yards being there and being surrounded by the packing-houses has had a tendency to enhance the value of the property there very much.

Q. I understand that, but they have given us the value of their improvements, and we want to get at the value of the raw land.

A. I am not speaking of the improvements; I am speaking of the raw land.

Q. I am taking away the stock-yards.

A. I don't see how you can do it.

Q. I can't do it by burning them down or anything of that kind, but I ask you if you can give us the value of this land for anything except stock-yards purposes?

A. If there was no Kansas City here, that land wouldn't be worth five dollars an acre."

APPENDIX C.

Summary of Annual Statement of Receipts and Disbursements of 275 State Banks doing business in the State of Kansas for the year ending December 31, 1897.

RECEIPTS.

Undivided profits January 1, 1897	$392,895 39
Interest and discount	1,345,196 01
Exchange	128,233 51
Rents	51,847 58
Commissions	26,091 89
Profit on real estate sold	2,473 51
Assessment on capital	4,000 00
Increase of capital	5,400 00
Reduction of capital	188,201 00
From surplus	89,551 11
All other sources	42,439 76
Total	$2,276,329 76

DISBURSEMENTS.

Officers' salaries	$355,323 57
Clerk hire	68,009 84
Rent	27,531 94
Insurance	8,021 42
Taxes	94,974 00
Interest on deposits	153,453 00
Interest on borrowed money	24,208 50
Dividends	283,018 55
Carried to surplus	132,293 15
Bad paper charged off	317,072 27
Loss on real estate sold	6,038 85
Depreciation of real estate	132,957 62
Depreciation of furniture and fixtures	30,050 27
All other purposes	182,343 26
Balance undivided profits	461,033 52
Total	$2,276,329 76

Average capital invested during year	$6,106,665.68
Gross earnings	$1,596,282.26
Per cent. of gross earnings to capital	26.13
Number of banks paying dividends	146
Capital on which dividends were paid	$3,574,900.00
Average dividend paid (per cent.)	**7.91**
Number of banks paying no dividend	129
Capital on which no dividend was paid	$2,531,765.68
Per cent. of dividends to total capital	4.63
Per cent. of officers' salaries to total capital	5.82
Per cent. of taxes to total capital	1.55

(Fourth Biennial Report of State Bank Commissioner of Kansas, 1897–98, page 218.)

APPENDIX D.

SUMMARY.

Summary of Annual Statement of Receipts and Disbursements of 95 Private Banks doing business in the State of Kansas for the year ending December 31, 1897.

RECEIPTS.

Undivided profits, January 1, 1897	$131,521 13
Interest and discount	376,817 64
Exchange	36,187 31
Rents	22,467 35
Commissions	10,922 76
Profit on real estate sold	1,660 61
Reduction of capital	69,000 00
Received from owners	33,322 67
Increase of capital	6,000 00
Surplus charged off	13,900 00
All other sources	5,827 97
Total	$707,627 44

DISBURSEMENTS.

Officers' salaries	$69,385 02
Clerk hire	30,022 00
Rent	5,432 98
Insurance	2,759 59
Taxes	28,328 11
Interest on deposits	34,597 87
Interest on borrowed money	5,066 46
Dividends	113,829 97
Carried to surplus	54,766 56
Bad paper charged off	135,643 94
Loss on real estate sold	347 15
Depreciation of real estate	29,174 50
Depreciation of furniture and fixtures	11,530 67
All other purposes	48,726 34
Balance undivided profits	138,024 28
Total	$707,627 44

Average capital invested during the year	$1,329,431 57
Gross earnings	585,404 77
Per cent. of gross earnings to capital	44 00
Number of banks paying dividends	48 00
Capital on which dividend was paid	627,380 00
Average dividend paid (per cent.)	**18 14**
Number of banks paying paying no dividend	47
Capital on which no dividend was paid	702,051 57
Per cent. of dividends to total capital	8 56
Per cent. of officers' salaries to total capital	8 22
Per cent. of taxes paid to total capital	2 13

(Fourth Biennial Report of State Bank Commissioner of Kansas, 1897-98, page 219.)

APPENDIX E.

EXTRACTS FROM THE AUDITOR'S REPORT FOR THE STATE OF KANSAS FOR 1897–98, CONCERNING MUNICIPAL BONDS AND THE RATES OF INTEREST THEREON.

NAME OF COUNTY, TOWNSHIP, ETC.	PURPOSE CREATED.	DATE OF ISSUE.	DATE OF MATURITY.	RATE.	AMOUNT.
ALLEN COUNTY.					
Marmaton Township	St. L. S. & W. R. R.	Sept. 1, 1887.	Sept. 1, 1901.	7	$20,000
Iola Township	" "	"	"	7	33,500
Elm Township	" "	"	"	7	20,000
Iola City	" "	"	"	7	26,500
ANDERSON COUNTY.					
Anderson County	L. L. & G. R. R.	Jan. 1, 1870.	Jan. 1, 1900.	7	9,000
Ozark Township	St. L. & E. R. R.	July 31, 1886.	July 31, 1916.	7	16,000
Indian Creek Township	" "	July 31, 1887.	July 15, 1917.	7	10,000
BARBER COUNTY.					
Barber County	Funding			8	143,000
Medicine Lodge Township	Bridge Bonds	Jan. 30, 1886.	July 1, 1916.	7	10,000
Kiowa Township	Railroad Bonds	April 1, 1887.	July 1, 1907.	7	25,000
Hazleton Township	" "	Mar. 1, 1889.	Mar. 1, 1907.	7	15,000
BUTLER COUNTY.					
El Dorado City	St. L. Ft. S. & W. Ry.	Jan. 22, 1883.	Jan. 22, 1903.	7	2,500
" "	Improvement	Aug. 1, 1883.	Aug. 1, 1903.	7	7,000
Augusta Township	St. L. & S. F. R. R.	June 5, 1880.	May 5, 1910.	7	23,000
Benton Township	St. L. Ft. S. & W. Ry.	Jan. 1, 1883.	July 1, 1903.	7	6,500
Bruno Township	St. L. & S. F. R. R.	June 5. 1880.	May 5, 1910.	7	17,000
CHEROKEE COUNTY.					
City of Columbus	R.R. Funding Bonds	Oct. 24, 1876.	Oct. 24, 1896.	10	12,000
Weir City	Water Bonds	June 30, 1887.	June 30, 1897.	10	1,000
CHEYENNE COUNTY.					
Wano Township	Building Bridge	Jan. 16, 1889.	Jan. 1, 1899.	10	1,000
CLAY COUNTY.					
Clay County	J. C. & Ft. K. R. R.	Feb. 16, 1872.	Feb. 16, 1902.	7	13,000
" "	Bridge	Aug. 4, 1885.	Aug. 4, 1905.	7	10,000
CLOUD COUNTY.					
Elk Township	Bridge	July 1, 1878.	July 1, 1898.	10	8,000
" "	Railroad	Sept. 1, 1878.	Sept. 1, 1908.	8	7,850
" "	"	Oct. 1, 1879.	Oct. 1, 1908.	8	12,150
Solomon Township	"	Nov. 1, 1879.	Nov. 1, 1909.	8	7,000
" "	Bridge	Jan. 1, 1885.	Jan. 1, 1895.	8	2,000
COFFEY COUNTY.					
Avon Township	K. C. B. & S. F. Ry.	Mar. 31, 1877.	Mar. 31, 1907.	7	87,000
Leroy Township	St. L. & E. R. R.	Jan. 21, 1887.	Jan. 21, 1917.	7	5,000
Liberty Township	Interstate R. R.	July 14, 1887.	Apl. 25, 1917.	7	10,000
" "	" "	Apl. 25, 1887.	July 14, 1917.	7	5,000
Neosho Township	" "	Oct. 6, 1886.	Apl. 25, 1917.	7	10,000
ELK COUNTY.					
Elk Falls Township	K. C. L. & S. K. Ry.	Oct. 1, 1879.	Oct. 1, 1909.	7	15,000
Wild Cat Township	" "	"	"	7	4,000
Pawpaw Township	K. C. & S. Ry.	Jan. 1, 1880.	Jan. 1, 1910.	3	8,000
Howard Township	" "	"	"	8	24,000
Greenfield Township	K. C. L. & S. K. Ry.	Dec. 1, 1879.	Dec. 1, 1909.	7	11,500
HAMILTON COUNTY.					
Syracuse Township	Bridge	June 1, 1887.	July 1, 1897.	8	4,500
Syracuse City	Improvement	Jan. 1, 1888.	July 1, 1908.	7	3,000
" "	City Hall	July 2, 1888.	July 1, 1909.	7	7,500
Coolidge City	School Bonds	June 5, 1887.	Jan. 1, 1902.	7	11,000
HASKELL COUNTY.					
Old Review Township	Poor Farm	June 6, 1889.	July 6, 1909.	7	1,500

Name of County, Township, etc.	Purpose Created.	Date of Issue.	Date of Maturity.	Rate.	Amount.
Hodgeman County.					
Sterling Township	Bridge	Oct. 10, 1885.	Oct. 10, 1897.	8	$500
" "			Oct. 10, 1898.	8	500
" "			Oct. 10, 1899.	8	500
" "			Oct. 10, 1900.	8	500
Kearny County.					
South Side Township		Dec. 21, 1886.	1906.	8	12,578
Lakin Township	Bridge	Jan. 18, 1886.			
Linn County.					
Linn County	Jail & Sheriff's res.	Aug. 25, 1896.	Feb. 1, 1899.	7	
Blue Mound Township	St. L. & E. R. R.	May 20, 1885.	Apl. 10, 1912.	7	25,000
Labette County.					
Oswego Township	M. W. Ry.	Dec. 30, 1876.	Jan. 1, 1897.	10	2,200
Richland Township	M. K. & T. Ry.	July 1, 1870.	July 1, 1890.	7	50,000
Pleasant Township	St. L. W. & W. Ry.	Nov. 14, 1879.	July 1, 1909.	7	9,000
McPherson County.					
Smoky Hill Township	Railroad	Sept. 3, 1879.	Sept. 3, 1909.	7	14,740
McPherson Township	"	Jan. 1, 1880.	Jan. 1, 1910.	7	20,000
Montgomery County.					
Montgomery County	L. L. & G. R. R.	July 2, 1877.	July 2, 1907.	7	153,000
Louisburg Township	S. K. R. R.	Aug. 7, 1879.	Aug. 1, 1909.	7	15,000
Mitchell County.					
Mitchell County	A. S. V. & D. Ry.	Sept. 16, 1878.	Sept. 16, 1908.	8	50,000
Cawker Township	" "	May 31, 1879.	May 31, 1909.	8	20,000
Glen Elder Township	" "	"	"	8	5,000
Neosho County.					
Mission Township	Bridge		June 1, 1902.	10	40,000
Norton County.					
Norton City	C. K. & N. R. R.	Dec. 1, 1890.	Dec. 1, 1900.	10	200
Osborne County.					
Sumner Township	Railroad	Dec. 20, 1879.	Dec. 20, 1909.	8	15,000
Penn Township	"	Aug. 15, 1879	Sept. 15, 1909.	8	15,000
Rice County.					
Lyons City	Waterworks	Sept. 22, 1885.	Sept. 1, 1900.	7	2,000
" "	"	"	Sept. 1, 1907.	7	3,000
Saline County.					
City of Brookville	City Hall	July 1, 1879.	July 1, 1899.	10	2,000
Scott County.					
Ninnescah Township	St. L. Ft. S. & W. Ry.	Aug. 1, 1884.	Aug. 1, 1904.	7	22,000
Ohio Township	" " "	"	"	7	10,000
Sumner County.					
City of Caldwell	Funding	Aug. 11, 1882.	Aug. 11, 1897.	8	3,000
" "	Bridge	"	"	8	2,500
Washington County.					
Washington Township	Railroad	July 1, 1877.	Jan. 1, 1907.	10	26,000
Wilson County.					
Center Township	C. V. & L. Ry.	July 1, 1886.	July 1, 1916.	7	25,000
Prairie Township	" " "	"	"	7	15,000
Center Township	C. K. & W. R. R.	Nov. 1, 1886.	Nov. 1, 1916.	7	25,000

(Extracts from the Eleventh Biennial Report of the Auditor of State of the State of Kansas for 1897-98. See pages 186-223.)

IN THE

Supreme Court of the United States.

CHARLES U. COTTING, *Complainant*,

v.

KANSAS CITY STOCK YARDS COMPANY, a corporation, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON, and LOUIS C. BOYLE as Attorney-General of the State of Kansas, *Defendants*.

FRANCIS LEE HIGGINSON, *Complainant*,

v.

KANSAS CITY STOCK YARDS COMPANY, a corporation, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON, and LOUIS C. BOYLE as Attorney-General of the State of Kansas, *Defendants*.

No. 237, OCTOBER TERM, 1898.

(Causes 7427 and 7453, U. S. C. C., Dist. of Kansas, First Division.—Consolidated.)

MOTION TO ADVANCE.

And now comes the defendant Louis C. Boyle, as Attorney-General of the State of Kansas, and moves the court to advance these causes (consolidated) for hearing at an early day during the present term of this court, and before the Holi-

day recess; and as reasons for such advancement this defendant says:

1. These two causes (consolidated for trial) were commenced by two stockholders of the Kansas City Stock Yards Company (a Kansas corporation) challenging the validity of an Act of the legislature of Kansas, being Chapter 240, Session Laws of 1897, entitled "An Act defining what shall constitute public stock-yards, defining the duties of the person or persons operating the same, and regulating all charges thereof, and removing restrictions in the trade of dead animals, and providing penalties for violations of this Act," approved March 3, 1897, published March 12, 1897.

The act in question materially reduced the charges formerly exacted by the Stock Yards Company for yardage, care and feeding of live stock, and the two stockholders each applied for an injunction to restrain said company from putting in force the reduced rates prescribed by the statutes, and to enjoin the Attorney-General of the State from enforcing the Act. The main contentions of the Complainants were that the act was in contravention of that part of Section 1 of the Fourteenth Amendment to the Constitution of the United States which forbids a state from depriving any person of his property without due process of law, or denying to any person within its jurisdiction the equal protection of the laws; and that the act was further violative of that clause of Section 8 of Article 2 of the Constitution which vests in the Congress the power to regulate commerce among the several states. Tem-

porary restraining orders were granted by the District Judge (Foster). Afterward on preliminary hearing several questions were decided, but the cases were referred to a master to take evidence and report the facts upon the principal issues (79 Fed. 679). After the coming in of the report of the master, the district judge (Foster) decided all the remaining questions in favor of the Attorney-General (82 Fed. 839). Application was then made by the complainants for a rehearing before Circuit Judge Sanborn, at St. Paul. The parties duly appeared and there entered into a written agreement for the immediate completion of the issues and for a final hearing on the merits and the master's report October 18, 1897, before Circuit Judge Thayer and District Judge Foster, the fourth clause thereof being as follows:

"The unsuccessful party on said hearing shall immediately take the necessary proceedings to appeal the said causes to the proper court of appeals, and file the record therein, *and both parties shall join in an application to the court to which the appeal shall be taken to advance the cases upon the docket of said court, and as far as they are able to secure a speedy hearing of said appeal.*"

The causes were heard together as agreed, and the hearing resulted in a decision in favor of the Attorney-General on the merits, the Circuit Judge (Thayer) concurring generally in the views formerly expressed by the District Judge (Foster) (82 Fed. 850).

The complainants appealed the cases to this court, and, of course, will concur in their advancement to "a speedy hearing" as stipulated.

2. These cases involve large public interests as well as those of said Stock Yards Company and its stockholders. The reduction in the rates by the enforcement of the new law amounts to about $300,000 per annum. If it is a valid enactment, and the Stock Yards Company continues to enforce the old rates, the shippers who patronize these yards are now compelled to pay an unjust tribute of about $300,000 annually to the Stock Yards Company; and two able Federal Judges have held the Act valid; and so far there is no dissent. This presents a very strong reason why the cases should be speedily heard and decided. That each shipper may have a right of action to recover back any illegal charges (if such right exists) is a poor reason for the undue continuance of a state of affairs making such a multiplicity of suits necessary to the attainment of justice.

3. On the preliminary hearing in April, 1897, the District Judge (Foster), as a condition of the continuance in force of the restraining orders, required a bond of $75,000 for the protection of the shippers and the repayment to them of any excessive charges, if it should be finally decided that said Act of the legislature is valid. On the final hearing a like bond of $200,000 was required of the Stock Yards Company as a condition for the stay of all proceedings under the Act until an appeal, to be taken within ten days, should be heard and determined by this court (82 Fed. 857). It is not clear whether both bonds (which were seasonably given) are now in force or not. If, however, the last should be held as cumulative to the first, the security is yet wholly inadequate.

It is now eighteen months since the first bond was required, and the excess over the statutory charges already amounts to about $450,000.

4. This defendant is informed and verily believes that since the final hearing of these consolidated causes, the said Kansas City Stock Yards Company has made a deed or deeds purporting to convey and transfer all its lands and other property in Kansas to a corporation created under the laws of the State of Missouri with the view of evading the repayment of excessive and illegal charges for yarding, taking care of, and feeding live stock in said Kansas City Stock Yards.

5. These causes have been pending in this court for several months, but this defendant is informed and verily believes that although the Clerk of this court long since made an estimate of the fees for editing and printing the record as required by the rules of this court, and gave due notice thereof to counsel for complainants, yet said fees have not been paid and the record has not been printed.

L. C. Boyle
Attorney General

David Martin
Of Counsel.

No. 237. 43 7
Brief of Martin for Appellee

Office Supreme Court U.S.
FILED
NOV 30 1898
JAMES H. McKENNEY,
Clerk

Filed Nov. 30, 1898.

IN THE

Supreme Court of the United States.

No. 237 of October Term, 1898.

CHARLES U. COTTING, *Appellant*,
vs.
LOUIS C. BOYLE, AS ATTORNEY-GENERAL OF THE STATE OF KANSAS, *Appellee*.

CAUSES CONSOLIDATED.
No. 7427.
No. 7453.

FRANCIS LEE HIGGINSON, *Appellant*,
vs.
LOUIS C. BOYLE, AS ATTORNEY-GENERAL OF THE STATE OF KANSAS, *Appellee*.

In U. S. C. C., Dist. of Kansas, First Division.

Motion to Dismiss Appeal for Want of Necessary Parties, and Brief in Support of Said Motion.

L. C. BOYLE,
Attorney-General of the State of Kansas,
Appellee.

DAVID MARTIN,
Of Counsel.

IN THE

Supreme Court of the United States.

No. 237 of October Term, 1898.

CHARLES U. COTTING, *Appellant,*
vs.
LOUIS C. BOYLE, AS ATTORNEY-GENERAL OF THE STATE OF KANSAS, *Appellee.*

FRANCIS LEE HIGGINSON, *Appellant,*
vs.
LOUIS C. BOYLE, AS ATTORNEY-GENERAL OF THE STATE OF KANSAS, *Appellee.*

CAUSES CONSOLIDATED.
No. 7427.
No. 7453.
In U. S. C. C., Dist. of Kansas, First Division.

NOTICE.

To Charles U. Cotting and Francis Lee Higginson, and their counsel and solicitors, Albert H. Horton and B. P. Waggener:

Please take notice that on Monday, the 19th day of December, 1898, at Washington, D. C., at the opening of the court, or as soon thereafter as counsel can be heard, a motion to dismiss the said appeal for want of necessary parties in the above-entitled causes will be submitted to the supreme court of the United States for decision.

Annexed hereto is a copy of the motion to dismiss and of the brief in support thereof.

LOUIS C. BOYLE,
As Attorney-General of the State of Kansas,
Appellee.

By DAVID MARTIN,
His solicitor for the purposes of this motion only.

IN THE

Supreme Court of the United States.

No. 237 of October Term, 1898.

CHARLES U. COTTING, *Appellant*,
vs.
LOUIS C. BOYLE, as Attorney-General of the State of Kansas, *Appellee.*

Causes Consolidated.
No. 7427.
No. 7453.

FRANCIS LEE HIGGINSON, *Appellant*,
vs.
LOUIS C. BOYLE, as Attorney-General of the State of Kansas, *Appellee.*

In U. S. C. C., Dist. of Kansas, First Division.

Motion to Dismiss Appeal for Want of Necessary Parties.

And now comes Louis C. Boyle, as attorney-general of the state of Kansas, named as appellee herein, appearing for the purposes of this motion only, and moves the court to dismiss the proceeding called an appeal herein by Charles U. Cotting and Francis Lee Higginson, and as grounds of this motion the said Louis C. Boyle, as attorney-general of the state of Kansas, says:

First. The Kansas City Stock-Yards Company, a corporation, Charles F. Morse, Harry P. Child, Eugene Rust and Elliott E. Richardson were co-defendants with said Louis C. Boyle, as attorney-general of the state of Kansas, in said suits consolidated, and

they duly appeared and participated in the litigation, yet they have not been made parties either as appellants or appellees to this proceeding called an appeal, but the said Louis C. Boyle, as attorney-general of the state of Kansas, is the sole appellee, and the said Charles U. Cotting and Francis Lee Higginson are the only appellants, and said co-defendants are necessary parties to this proceeding called an appeal.

Second. The Kansas City Stock-Yards Company, a corporation, Charles F. Morse, Harry P. Child, Eugene Rust and Elliott E. Richardson were charged as co-defendants by the bills of complaint as joint wrong-doers with the said Louis C. Boyle, as attorney-general of the state of Kansas, against the complainants, Charles U. Cotting and Francis Lee Higginson, respectively, who are named as appellants herein, and although a decree *pro confesso* was formally entered against said co-defendants on October 28, 1897, yet on the same day said bills of complaint were dismissed on the merits, with costs taxed in favor of the said Louis C. Boyle, as attorney-general of the state of Kansas; and the dismissal of said bills became in law and in equity a joint decree of dismissal in favor of all the defendants, yet no defendant except the said Louis C. Boyle, as attorney-general of the state of Kansas, has been made a party to this proceeding called an appeal, and no citation has ever been issued against said co-defendants, and they have not become parties to this proceeding in any manner.

LOUIS C. BOYLE,
Attorney-General of the State of Kansas,
Appellee.

By DAVID MARTIN,
His Solicitor.

IN THE

Supreme Court of the United States.

No. 237 of October Term, 1898.

CHARLES U. COTTING, *Appellant*,
vs.
LOUIS C. BOYLE, AS ATTORNEY-GENERAL OF THE STATE OF KANSAS, *Appellee.*

FRANCIS LEE HIGGINSON, *Appellant*,
vs.
LOUIS C. BOYLE, AS ATTORNEY-GENERAL OF THE STATE OF KANSAS, *Appellee.*

CAUSES CONSOLIDATED.
No. 7427.
No. 7453.
In U. S. C. C., Dist. of Kansas, First Division.

Brief of Attorney-General in Support of Motion to Dismiss Appeal for Want of Necessary Parties.

I.

STATEMENT.

ON March 12, 1897, by publication in the official newspaper, an act of the legislature of Kansas, approved March 3, 1897, became operative, if valid, said act being entitled "An act defining what shall constitute public stock-yards, defining the duty of the person or persons operating the same and regulating the charges thereof, and removing restrictions in the trade of dead animals, and providing penalties for

violations of this act." (Chapter 240, Session Laws of 1897.)

On March 13, 1897, Charles U. Cotting commenced suit No. 7427, in the circuit court of the United States for the district of Kansas, first division. On account of haste in bringing the action, it seemed doubtful if equity rule No. 94 had been sufficiently complied with. On March 26, 1897, Francis Lee Higginson commenced a like action, No. 7453. The defendants were the same in each case. Each complainant was a stockholder in the Kansas City Stock-Yards Company, and the other defendants, except Louis C. Boyle, as attorney-general of the state of Kansas, were officers of said corporation. It was alleged that the Stock-Yards Company and its officers had threatened to and were putting into force and effect the rates prescribed by the new act, which were much lower than had been before charged, which would greatly reduce the profits of the corporation and diminish the dividends of the complainants, and that said act was void for several reasons set forth in the bills; yet that the attorney-general was threatening to enforce said act, thereby putting the Stock-Yards Company and its officers in fear of criminal prosecutions, etc. The relief sought by each bill was substantially the same. We quote the essential part of the prayer in the Higginson case, as follows:

"Therefore your orator prays the decree of this honorable court, adjudging that it is the duty of the said defendant corporation and the said Charles F. Morse, acting president, general manager and sole managing director of said defendant corporation, for the benefit of said corporation and of your orator

and the other stockholders of said corporation, to revoke at once the orders and directions to put in force the provisions of said so-called act, referred to herein as 'Exhibit A,' and the maximum charges and prices therein specified, and that it is the duty of said defendant corporation and the said Charles F. Morse, acting president, general manager and sole managing director, for the pecuniary benefit of your orator and the other stockholders of said defendant corporation, to maintain and operate the stock-yards of said defendant corporation herein named in the same manner as they have been heretofore economically and successfully operated, and to charge for the services to be furnished, for yardage and other matters, the present existing charges (which are fair, reasonable and just); and also to sell and deliver hay, corn and other grain to stock-raisers, shippers and other persons, upon the same terms and for the same prices and in the same way such articles are now sold by said defendant corporation (which said prices, under all the circumstances and conditions, are fair, reasonable and just); and that said defendant corporation, and each of its said officers and agents named as defendants herein, shall be enjoined from obeying, observing or putting into force any of the provisions of said so-called act; and that said order and injunction issue against said defendant corporation and the said Charles F. Morse, as acting president and sole managing director thereof, and each of the other officers and agents of said defendant corporation, made parties defendant herein, commanding them and each of them to refrain from putting into force the provisions of the said so-called act or any part part thereof.

"That the said Louis C. Boyle, as attorney-general, be adjudged and decreed from attempting, as against said defendant corporation or any of its officers, agents, servants or employees, to enforce the provisions of the said so-called act or any part thereof. And also, that said order and injunction issue against the said Louis C. Boyle, as attorney-general, commanding him to refrain from harassing and annoying, by prosecution or otherwise, under the provisions of the said so-called act, the defendant corporation, the said Charles F.

Morse, or any of the other officers, servants, agents or employees of the said defendant corporation herein named.

"That the final mandatory order and injunction of this court in this case issue, compelling said defendant corporation, and the said Charles F. Morse and each of the other officers and agents of said defendant corporation herein named, to operate and maintain the said stock-yards of the said defendant corporation in the state of Kansas as they are now operated and maintained, and that they exact and collect the same charges for services performed and the same prices now demanded and received, wholly disregarding the said so-called act and all of the provisions thereof.

"That a final order, judgment and decree issue that the said so-called act, approved March 3, 1897, herein referred to as 'Exhibit A' and made a part of this bill of complaint, is unconstitutional and void and of no validity, force or effect whatever; and that all of said defendants and each of them be enjoined from enforcing or attempting to enforce the said so-called act or any of the provisions thereof.

"That a preliminary injunction may issue at once, upon the filing of this bill of complaint, against the said defendant corporation and each of its officers and agents named as defendants herein, during the pendency of this suit, strictly commanding and enjoining the said defendants and each of them, under the pains and penalties which may fall upon them and each of them in case of disobedience, that they forthwith and until the further order, judgment and decree of this court, desist from putting into force the said maximum rates, charges and prices specified in said so-called act aforesaid; and against the said Louis C. Boyle, as attorney-general, commanding and enjoining him to desist from enforcing or attempting to enforce the said so-called act against said defendant corporation and its officers and agents named as defendants herein, by arrest or otherwise, through the courts of the state or otherwise."

Temporary restraining orders were issued in each case substantially in accordance with said prayer.

The causes, being consolidated, were referred to a master, who was empowered to take testimony, and report the same, with his findings "as to all matters and things in issue upon the hearing of the preliminary injunction prayed for under the bills of complaint, . . . including, among other things, the cost of the Kansas City stock-yards, the present value of the property of the Kansas City Stock-Yards Company, the receipts and expenditures thereof, the manner of operation, including its transportation of cattle and other stock from Kansas to Missouri and other states, and from Missouri to Kansas and other states, the handling of the same as interstate commerce (if any such interstate commerce is carried on by the defendant corporation), and such other matters as may be pertinent upon the hearing of the application for the temporary injunction prayed for." (See order filed April 12, 1897.)

A great deal of testimony was taken, and the master made a full report of the facts. On the hearing before the district judge (FOSTER), it was held that the restraining orders should be vacated and the temporary injunction refused. But a stipulation was entered into October 7 (filed October 9, 1897) for the final hearing before Circuit Judge THAYER and District Judge FOSTER.

All the defendants appeared by their respective counsel in the early stages of the cases, and the defendant the Kansas City Stock-Yards Company was an active participant in the litigation throughout.

On the first hearing, April 2, 1897, on motion to

consolidate and amend, the defendants other than the attorney-general appeared by I. P. Dana, their solicitor. (See decree filed April 2, 1897.) On the next day, on the motion for a temporary injunction, they again appeared by Pratt, Dana & Black. (See decree filed April 12, 1897.)

On October 7, 1897, Pratt, Dana & Black, as solicitors for the Kansas City Stock-Yards company, entered into the stipulation for the final hearing of the cases to commence on October 18, 1897, at two o'clock, before Judges THAYER and FOSTER. (See stipulation filed October 9, 1897.)

The final decree of October 28, 1897, says: "Now come the parties herein by their respective solicitors." This decree does not expressly name said co-defendants as such except in the title, but the Kansas City Stock-Yards Company is required by the decree to give a certain bond as a condition for staying the operation of the state law pending the appeal to this court. (See decree filed October 28, 1897; also, 82 Fed. 840.)

On October 20, 1897, after the court had decided adversely to the complainants, by vacating the restraining orders and refusing a temporary injunction, the clerk, at the request of the complainants' solicitors, entered a *pro confesso* in each case against the Kansas City Stock-Yards Company, Charles F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson; and on October 28, 1897, a formal decree *pro confesso* was entered against said defendants, but on the same day a judgment was rendered and a final

decree entered on the merits dismissing the bills. The following is a copy of said final decree, omitting the heading, which contains the title and number of each case:

"FINAL DECREE.

"Now come the parties herein, and by their respective solicitors, on this 28th day of October, 1897, and the foregoing causes having been heretofore, on the 20th day of October, 1897, duly heard and submitted upon the pleadings, proofs, stipulations of the parties, master's report, exceptions thereto, and the arguments of counsel thereon, and the same having been duly taken under advisement by the court and due deliberation having been had, it is ordered, adjudged and decreed that the said bills of complaint herein and each of them be and the same are hereby dismissed, with costs taxed in favor of the defendant, Louis C. Boyle, as attorney-general of the state of Kansas. To the end, however, that the existing status may be maintained, pending an appeal to the supreme court of the United States, it is further ordered, adjudged and decreed that the injunction which was heretofore granted in these causes, and each of them, be restored and continued in force for the term of ten days, and if in the meantime an appeal shall be taken, such injunction shall be continued in force until the appeal is heard and determined in the supreme court of the United States; provided, that in addition to the ordinary appeal bond, the Kansas City Stock-Yards Company shall make and file in this court its bond in the penal sum of two hundred thousand dollars, payable to the clerk of this court and his successors in office, for the benefit of whom it may concern, conditioned that in the event the decree dismissing the bills is affirmed, it will, on demand, pay to the party or parties entitled thereto all overcharges for yarding and feeding live stock at its stock-yards in Kansas City, Kan., and Kansas City, Mo., which it may have exacted in violation of sections 4 and 5 of the Kansas statute relative to stock-yards, approved March 3, 1897, since an injunction was first awarded herein,

to wit, on the 13th day of March, 1897, and that it will in like manner pay such overcharges, if any, as it may continue to exact in violation of said statute during the pendency of said appeal—said obligation to be void if the statute in question shall be pronounced invalid by the supreme court of the United States.

"It is further ordered that nothing herein contained shall impair any recourse which any party or parties may have on the bond for seventy-five thousand dollars heretofore given in this case, except to postpone claims made thereon until this case is finally determined on appeal, and that the stock-yards company shall hereafter give to shippers of cattle, or their agents, proper receipts for money paid for yarding, feeding, watering and weighing live stock, which shall show on their face the amounts exacted for such services, and the price charged for feed.

"The complainants, by their solicitors, duly excepted at the time in open court to the order and decree of said court dismissing said bills of complaint and each of them, and thereon in due form prayed for an appeal in each case, which said appeal is duly allowed, and the amount of the appeal bond to be given by the complainants with one or more sureties is fixed at $1,500. AMOS M. THAYER,

"OCTOBER 28, 1897. *U. S. Circuit Judge.*"

On November 23, 1897, the circuit judge granted an order enlarging the time to docket the consolidated case and file the record thereof with the clerk of this court, to which order the attorney-general consented. The body of said order and consent of the attorney-general reads as follows:

"For good cause shown, it is hereby ordered that the time in which the complainants shall docket the above case and file the record thereof with the clerk of the supreme court of the United States is enlarged by me for seventy days from and after the return-day fixed in said citation on appeal to the supreme court,

and the said complainants are hereby permitted to docket the above case and file the record thereof with the clerk of the supreme court of the United States by or before the period of seventy days from and after the date of the return-day of said citation.

"Dated NOVEMBER 23, 1897. AMOS M. THAYER,
United States Circuit Judge."

"I hereby consent to the granting and signing of said order. L. C. BOYLE,
"NOVEMBER 23, 1897. *Attorney-General.*"

The appeal taken by the complainants, Cotting and Higginson, runs against Louis C. Boyle, as attorney-general of the state of Kansas, only, and no citation has been issued against any other person as appellee.

II.—ARGUMENT.

1.—The Final Decree is Joint in Favor of all the Defendants.

The record does not show whether the decree *pro confesso* preceded or followed the final decree of dismissal on the merits. Both decrees are of the same date. We do not suppose it material which was prior in point of exact time. If the *pro confesso* was subsequent to the final decree of dismissal, of course it was unauthorized; if prior in point of time, it was superseded by the final decree. It is impossible to conceive of the act of the Kansas legislature being valid as to the attorney-general and void as to the Stock-Yards Company and its officers. The decree *pro confesso* is clearly unauthorized, for, if valid, then this state of affairs would exist: the Stock-Yards Company and its officers would be required to enforce the old rates in violation of the Kansas statute, while the attorney-general would be authorized by the final decree to prosecute for such violations of the act.

In Frow v. De La Vega, 15 Wall. 552, it was held that a final decree on the merits cannot be made separately against one of several defendants upon a joint charge against all, where the case is still pending as to the others; and if the bill in such case be dismissed on the merits, it will be dismissed as to the

defendant in default as well as the others. Justice BRADLEY, delivering the opinion of the court, said:

"If the court in such a case as this can lawfully make a final decree against one defendant separately, on the merits, while the cause was proceeding undetermined against the others, then this absurdity might follow: there might be one decree of the court sustaining the charge of joint fraud committed by the defendants; and another decree disaffirming the said charge, and declaring it to be entirely unfounded, and dismissing the complainant's bill. And such an incongruity, it seems, did actually occur in this case. Such a state of things is unseemly and absurd, as well as unauthorized by law.

After explaining the proper procedure, the learned justice says:

"But if the suit should be decided against the complainant on the merits, the bill will be dismissed as to all the defendants alike—the defaulter as well as the others. If it be decided in the complainant's favor, he will then be entitled to a final decree against all. But a final decree on the merits against the defaulting defendant alone, pending the continuance of the cause, would be incongruous and illegal."

This case was cited with approval in Hohorst v. Hamburg-American Packet Co., 148 U. S. 262, 265.

In the original cases, the Stock-Yards Company and its officers, as well as the attorney-general, were treated as having assumed a hostile attitude to the complainant stockholders, and all the defendants were charged as joint wrong-doers in attempting to lower the rates in compliance with the Kansas statute. It was alleged that, notwithstanding the remonstrance of the complainant stockholders, the Stock-Yards Company and its officers had given notice that it would conform its rates to the statutory requirements. True,

it was alleged that the company and its officers did this through fear of criminal proceedings by the attorney-general; but the effect upon the revenues of the company, the vital question at issue, would be the same whether the Stock-Yards Company and its officers acted voluntarily or through fear in lowering the rates in accordance with the statute. A joint contemplated wrong was therefore charged against the Stock-Yards Company, its officers, and the attorney-general.

The final decree of dismissal was joint in its terms. It was not a dismissal as against the attorney general alone. Its reading is as follows:

"It is ordered, adjudged and decreed that the said bills of complaint herein and each of them be and the same are hereby dismissed, with costs taxed in favor of the defendant Louis C. Boyle, as attorney general of the state of Kansas."

This is surely a general dismissal of the bills as against all the defendants, though the costs are taxed in favor of the attorney-general alone. The decree *pro confesso* must be disregarded in any event. If the dismissal was not as to the Stock-Yards Company and its officers, then the causes are still pending and undetermined as to them, like the case cited from 15 Wall. We think, however, this court should treat the cases as finally disposed of as to all the defendants by the final dismissal of the bills October 28, 1897.

2.—Final Decree being Joint, all the Defendants Must be Parties to the Appeal.

It results from the foregoing that the final decree sought to be reviewed in this case was joint in favor of all the defendants; and, all being interested, each is a necessary party to a valid appeal. This is well settled by the authorities.

Elliott, in his work on Appellate Procedure, sections 138 and 140, states the doctrine, and says:

"Where the judgment is joint . . . all who are parties to the judgment must be made parties on appeal."

Under the head of "Parties to Proceedings in Error and Citation," Powell, in his work on Appellate Proceedings, pp. 272, 273, 274, says:

"SEC. 13. Proceedings in error must have their proper parties, and any defect is subject to objection as any original writ. No one can be plaintiff in error but he who is a party or privy to the record, and prejudiced by the final judgment. And all who were affected by the judgment either as plaintiffs or defendants, or their personal representatives, should join in the proceedings in error as parties thereto as they were joined in the judgment and interested for or against its reversion. A party co-defendant in the judgment who refuses to join in the proceedings in error should be summoned and served.

. . . . . .

"SEC. 14. When all the proper parties have not been joined as plaintiffs or defendants in error, the defendant may object to it, by doing so in due time by motion to dismiss or by a plea in abatement; for it is convenient and will tend to prevent multiplicity of suits and unnecessary labor, that all the parties inter-

ested in the judgment sought to be reversed should be brought before the court, so that the affirmance, reversal or modification of the judgment when made shall bind all the parties."

In Basket v. Hassell, 107 U. S. 602, 608, this court has declared that "an appeal will not be dismissed by reason of the omission of certain persons who were parties to the suit in the court below, if they have no interest in maintaining or reversing the decree." The converse of this proposition is also well established by the decisions of this court, though perhaps not in exact words. If the parties to the judgment of the court below have an interest either in maintaining or reversing the decree, they are necessary parties to an appeal. Most of the cases in this court involving this principle have arisen where there has been a joint judgment or decree against several defendants and part of them only have appealed. But we take it that the principle is the same where the plaintiff or complainant appeals — all those interested either in maintaining or reversing the decree or judgment are necessary parties to the appeal; and the same rule applies to writs of error.

In Williams v. Bank of the United States, 11 Wheat. 414, the judgment in the circuit court was joint upon a joint action against three defendants, and a writ of error was sued out by one of them in his own name only, without joining the others. The writ of error was dismissed on the ground that it ought to have been in the name of the three, but if the others should refuse to join in it, then it would deserve consideration whether the plaintiff might not have summons

and severance. The opinion was delivered by Chief Justice MARSHALL.

In Owings *et al.* v. Kincannon, 7 Pet. 399, a joint decree against six defendants was appealed from by two of them only. A motion to dismiss this appeal was sustained on the ground that all the defendants should have joined in it; Chief Justice MARSHALL delivering the opinion of the court. After citing the case of Williams v. Bank of the United States, *supra*, he says:

"By the judicial act of 1789, decrees in chancery pronounced in the circuit court could be brought before this court only by writ of error. The appeal was given by the act of 1803. The act declares 'that such appeals shall be subject to the same rules, regulations and restrictions as are prescribed by law in cases of writs of error.' . . . The language of the act which gives the appeal appears to us to require that it should be prosecuted by the same parties who would have been necessary in a writ of error."

In Deneale v. Stump's Executors, 8 Pet. 526, a writ of error in the name of Mary Deneale "and others" was dismissed. The court, through Chief Justice MARSHALL, says:

"Mary Deneale cannot alone maintain a writ of error on this judgment, but all the parties must be joined and their names set forth, in order that the court may proceed to give a proper judgment on the case."

In Heirs of Wilson v. Insurance Company, 12 Pet. 140, the writ of error named the plaintiffs only as "the heirs of Nicholas Wilson," and all the defendants in the court below did not join in the writ, and it was held bad on both grounds and was dismissed.

Chief Justice TANEY, delivering the opinion of the court, cites the two foregoing cases from 7 Pet. and 8 Pet., respectively, and then proceeds as follows:

"In both of the cases referred to, it appears that the motions to dismiss were not made at the first term, or at the time of appearance in this court, but each of the cases had been depending here two years before the motion was made. The rule of this court therefore is, that where there is a substantial defect in the appeal or writ of error, the objection may be taken at any time before judgment, on the ground that the case is not legally before us, and that we have not jurisdiction to try it. It follows that the writ of error in the case under consideration must be dismissed."

In Smyth v. Strader *et al.*, 12 How. 327, the decision of the court is as follows:

"It appearing to the court here that this writ of error is vicious and defective, inasmuch as it does not set out the names of all the parties to the judgment of the circuit court, it is thereupon, on the motion of Mr. Pryor, of counsel for the defendants in error, now here ordered and adjudged by this court, that this cause be and the same is hereby dismissed, with costs."

In *Ex parte* Mussina *et al.*, 20 How. 280, it was held that, where a part of the persons against whom a decree has been rendered have appealed, the others cannot take an appeal—the first appeal should in such case be dismissed as irregular, and a new appeal taken in which all should join; if all will not, summons and severance. Justice MCLEAN delivered the opinion of the court.

In Masterson v. Herndon, 10 Wall. 416, it is distinctly ruled that all the parties against whom a joint judgment or decree is rendered must join in the writ of error or appeal or it will be dismissed, except suffi-

cient cause for the misjoinder be shown. Justice MILLER discusses in the opinion the old practice of summons and severance, which he says has "fallen into disuse in modern practice," but that the supreme court will give the same effect to the allowance of a writ of error or an appeal when the record shows that one of the parties has been notified or requested in writing to join in the writ of error or appeal, and refuses to do so. The appeal was dismissed.

In Miller v. McKenzie, 10 Wall. 582, the suit was commenced by Miller against McKenzie, James Hamer, Joseph Hamer and Wall to recover the value of several bales of cotton. Judgment was rendered for the defendants, whereupon the plaintiff prosecuted his writ of error. The defendants moved to dismiss the case for want of jurisdiction. The opinion of the court, delivered by Justice NELSON, is as follows:

"It appears from an inspection of the record that the writ of error is defective in respect to the parties. It is therein recited that the proceedings are between Pitzer Miller and Larkin McKenzie *and others*. This defect has been held so many times in this court as fatal to its jurisdiction, that it need be but mentioned to require a dismissal of the case. Motion granted."

In The Protector, 11 Wall. 82, the appeal was dismissed because taken in the name of William A. Freeborn & Co., the court holding that no difference existed between writs of error and appeals as to the manner in which the names of the parties should be set forth.

Justice NELSON, delivering the opinion of the court, says:

"The motion made by the appellees to dismiss the case from the docket for want of jurisdiction is grounded upon a defect of the title of the parties in the appeal as allowed. The title is 'William A. Freeborn & Co. v. The Ship Protector and Owners.' This defect in a writ of error has been held fatal to the jurisdiction of the court since the case of Deneale *et al.* v. Stump's Executors down to the present time, nor can the writ be amended according to the repeated decisions of this court."

The learned justice then reviews the acts of congress governing the practice and the decisions under them, and shows that in respect to the joinder of parties there is no difference between a writ of error and an appeal in equity or in admiralty.

Justices SWAYNE and BRADLEY were of opinion that the defect was amendable, and they dissented on that ground only. As the names of all three of the libelants constituting the firm of Wm. A. Freeborn & Co. appeared in the record, the defect would now be amendable under the act of June 1, 1872 (Revised Statutes, § 1005). Estes v. Trabue, 128 U. S. 225, *post.*

In Hampton v. Rouse, 13 Wall. 187, there was a motion to dismiss the writ of error from a judgment in ejectment against Wade Hampton and two other defendants. All the defendants tendered the bill of exceptions, but the writ of error was prosecuted by Wade Hampton only, and there was no summons and severance or other equivalent proceeding. Chief Justice CHASE delivered the following opinion of the court, namely:

"It has often been held that in a writ of error to a joint judgment against several, all must join, and that the omission of one or more without such proceeding is an irregularity for which the writ will be dismissed. The motion in the present case must therefore be granted."

Simpson v. Greeley, 20 Wall. 152, was originally an action of ejectment, for rents and profits and for waste, commenced in the district court of Leavenworth county, Kansas, by C. S. Greeley and seven others against William A. Simpson and eight others, who were his tenants; judgment for the plaintiffs against the defendants for possession of the lands, and against defendant Simpson for $4300 for rents, issues, profits, and waste, and against the other defendants for $2600, to be credited as part of said $4300 if collected. Simpson carried the case to the supreme court of Kansas, alleging that he could not obtain the assent of any of his co-defendants to join him in the proceedings. Afterwards, however, they did file a petition in error similar to that of Simpson. The court affirmed the judgment, when Simpson alone applied for a writ of error under the twenty-fifth section of the judiciary act. 8 Kan. 587, 589, 601; 20 Wall. 153.

The writ of error was dismissed by the supreme court of the United States for want of jurisdiction, in accordance with the well-established doctrine of the court, that all the parties against whom a joint judgment or decree is rendered must join in the writ of error or appeal, or it will be dismissed, except sufficient cause for the non-joinder be shown. Justice CLIFFORD, anouncing the unanimous decision of the

court, reviews the cases and then states the rule, as follows:

"Where the interest is joint and the interest of all is affected by the judgment, the rule is universal that all must join in the writ of error, else it is open to the other party to demand that it be dismissed, unless a severance of the parties in interest has been effected by summons and severance, or by some equivalent action appearing in the record."

The opinion in Feibelman v. Packard *et al.*, 108 U. S. 114, delivered by Chief Justice WAITE, reads as follows:

"Moses Feibelman and George Voelker, as partners, sued the defendants in error to recover damages for the seizure of their partnership goods by Packard, marshal of the United States for the district of Louisiana. A judgment was rendered against them. Their interests in the suits were joint, and the judgment affects them jointly and not separately. Feibelman alone has brought this writ of error, and there has been no summons and severance, or other equivalent proceedings. It follows that the writ must be dismissed on the authority of Williams v. Bank of the United States, 11 Wheat. 414; Masterson v. Herndon, 10 Wall. 416; Simpson v. Greeley, 20 Wall. 152, and it is so ordered."

In Hilton v. Dickinson, 108 U. S. 165, 168, this court said, through Chief Justice WAITE, that "if, on looking into the record, we find we have no jurisdiction, it is our duty to dismiss on own motion without awaiting the action of the parties." And this principle was reaffirmed in Estes v. Trabue, 128 U. S. 225, 226, where the court further decides, that

"Where the judgment below is a money judgment against the claimants and their two sureties in a bond, naming them jointly, and the sureties do not join in a writ of error, and there is no proper summons and

severance, the defect is a substantial one, which this court cannot amend, and by reason of which it has no jurisdiction to try the case, and it will of its own motion, dismiss the case, without awaiting the action of a party."

And this case arose long after the taking effect of the act of congress of June 1, 1872, allowing the amendment of writs of error in certain cases, and now published as section 1005 of the Revised Statutes.

In Shannon v. Cavazos, 131 U. S., App. LXXI, where one of the several codefendants appealed from a joint decree against all, without summons and severance, the case was dismissed.

In Downing v. McCartney, 131 U. S., App. XCVIII, an appeal by one of three complainants from a joint decree without notice to the others, and without their refusing to join in it, was dismissed.

The syllabus in Mason v. United States, 136 U. S. 581, reads as follows:

"A postmaster and the sureties on his official bond being sued jointly for a breach of the bond, he and a part of the sureties appeared and defended; the suit was abated as to one of the sureties who had died, and the other sureties made default, and judgment of default was entered against them. On the trial a verdict was returned for the plaintiff, whereupon judgment was entered against the principal and all the sureties for the amount of the verdict. The sureties who had appeared sued out a writ of error to this judgment without joining the principal or the sureties who had made default. The plaintiff in error moved to amend the writ of error by adding the omitted parties as plaintiffs in error, or for a severance of those parties. *Held*, the motion must be denied."

Hardee v. Wilson, 146 U. S. 170, decides that where an appeal is brought by one of several joint defendants

without a summons and severance or equivalent proceedings, the appeal will be dismissed. Justice SHIRAS, delivering the opinion of the court, reviews the authorities, and fully explains the former procedure of summons and severance, as also the modern practice on this subject.

In Nash v. Harshman, 149 U. S. 263, an appeal by the mortgagor alone from a decree of foreclosure against him and his subsequent grantee and other defendants, leaving the case pending in the court below against the other defendants, was dismissed on the authority of Hohorst v. Hamburg-American Packet Co., *supra*.

In Hedges v. Seibert Cylinder Oil Cup Co., 50 Fed. Rep. 643, the circuit court of appeals for the third circuit recognized the same rule, and it was accordingly held that all the parties against whom a joint judgment or decree was rendered must unite in a writ of error or appeal therefrom, and where the writ of error is sued out or the appeal taken by only one of such parties it will be dismissed, unless there has been a summons and severance or some like proceeding, or sufficient cause is shown for the non-joinder of the other parties. The solicitor for appellant contended that the decree was joint and several, and that, where the decree on its face shows a severance or a separateness, any one of the parties may appeal in respect of his several or separate interest, this being equivalent to summons and severance; but the court did not so regard it.

Scores of decisions of the state courts might be

cited fully sustaining the doctrine announced by Elliott and Powell in their text-books upon Appellate Procedure, as cited at the beginning of this subdivision of our brief, that "all the parties interested in the judgment sought to be reversed, should be brought before the court, so that the affirmance, reversal or modification of the judgment when made shall bind all the parties."

The supreme court of Kansas has many times asserted the rule to be that the absence of a party to a judgment who will be affected by a modification or reversal is sufficient to defeat the jurisdiction of the court, and there can be no review of any part of the judgment.

McPherson v. Storch, 49 Kan. 313, 321, and cases cited.

Investment Co. v. National Bank, 56 id. 49.

See also—

Smetters v. Rainey, 14 Ohio St. 287.

Carter v. Atkinson, 29 Neb. 612, 622.

Handerlock v. Dundee, M. & T. I. Co., 88 Ind. 139, 141.

Concannon v. Noble, 96 id. 326.

It cannot be claimed that the Kansas City Stock-Yards Company has no interest either in maintaining or reversing the final decree dismissing the bills of complaint. Whether it should have been an appellant or an appellee makes no difference now, for it is neither the one nor the other. Yet it is the principal party in interest. By the bills, it appears that Cotting owned

250 shares and Higginson 296 shares of the stock of the company, being in all of a par value of $54,600, while the capital stock outstanding was alleged to be $7,368,650. The complainants together, therefore, owned only one one-hundred-and-thirty-fifth part of the stock of the company. If the complainants were injured by the operation of the Kansas law, the Kansas City Stock-Yards Company was injured one hundred and thirty-five times more. It certainly ought to have been made a party to the appeal, so that it might have protected its interests, whether those interests were with the attorney-general or with the complainants. Although the complainants, who are now appellants, placed the Stock-Yards Company in a hostile attitude and ranged it with the attorney-general as a defendant, there is ground for suspicion that the company sympathized with the complainants, for it gave a bond in the sum of $200,000 for the purpose of staying the operation of the law pending the appeal. But on whatever side its interest may be, it should have been made a party to the appeal, so that it might protect those interests; and any party to the decree may make such an objection as this, for it is jurisdictional.

We have caused enough of the record to be printed to accompany this brief to enable the court to act understandingly upon this motion without referring to the original record.

We call especial attention to the facts that the appeal bond runs to the attorney-general alone, and the citation is issued against him only, and while the

bond for $200,000 and the assignments of error recite the names of all the parties below in the title, yet the indorsements show that the appeal was intended to be taken against the attorney-general and no one else.

We therefore respectfully ask that our motion be sustained, and that the appeal be dismissed for want of necessary parties.

L. C. BOYLE,
Attorney-General of the State of Kansas,
Appellee.

DAVID MARTIN,
Of Counsel.

TOPEKA, KAN., November 26, 1898.

No. 237. 43 7

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SUPREME COURT OF THE UNITED ST

OCTOBER TERM, 1898.

No. 237.

Filed Jan. 14, 1899.

CHARLES U. COTTING, *Appellant*,
vs.
LOUIS C. BOYLE, as Attorney-General of the State of Kansas, *Appellee*.

Also, The Kansas City Stock-Yards Company, a corporation, Charles F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson, impleaded with said Louis C. Boyle, as Attorney-General of the State of Kansas, as defendants in the court below.

FRANCIS L. HIGGINSON, *Appellant*,
vs.
LOUIS C. BOYLE, as Attorney-General of the State of Kansas, *Appellee*.

Also, The Kansas City Stock-Yards Company, a corporation, Charles F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson, impleaded with said Louis C. Boyle, as Attorney-General of the State of Kansas, as defendants in the court below.

CAUSES CONSOLIDATED.
No. 7427.
No. 7453.
In U. S. C. C., District of Kansas, First Division.

MOTION TO ABATE SUIT, AND BRIEF IN SU
SAME. ALSO, AFFIDAVIT OF L. C. BO

DAVID MARTIN.
L. C. BOYLE.

In the Supreme Court of the United States.

No. 237 of October Term, 1898.

CHARLES U. COTTING, *Appellant*,
vs.
LOUIS C. BOYLE, as Attorney-General of the State of Kansas, *Appellee*.
Also, The Kansas City Stock-Yards Company, a corporation, Charles F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson, impleaded with said Louis C. Boyle, as Attorney-General of the State of Kansas, as defendants in the court below.

FRANCIS L. HIGGINSON, *Appellant*,
vs.
LOUIS C. BOYLE, as Attorney-General of the State of Kansas, *Appellee*.
Also, The Kansas City Stock-Yards Company, a corporation, Charles F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson, impleaded with said Louis C. Boyle, as Attorney-General of the State of Kansas, as defendants in the court below.

CAUSES CONSOLIDATED.
No. 7427.
No. 7453.
In U. S. C. C., District of Kansas, First Division.

NOTICE.

To Charles U. Cotting and Francis Lee Higginson, Appellants, and their Counsel and Solicitors, Albert H. Horton and B. P. Waggener:

Please take notice that on Monday, February 6, 1899, at Washington, D. C., at the opening of the court, or as soon thereafter as counsel can be heard, a motion will be submitted, for decision, to the supreme court of the United States, by the appellee, Louis C. Boyle, sued as attorney-general of the state of of Kansas, for the abatement as to him of the said consolidated suit, and that the cause be stricken from the docket of said court as to him, without revivor or continuance against any person in the place or stead of said appellee, by substitution or otherwise.

Annexed hereto is a copy of said motion, a copy of the affidavit of Louis C. Boyle, and a copy of the brief in support of said motion.

LOUIS C. BOYLE,
Sued as Attorney-General of the State of Kansas.

By DAVID MARTIN, his Solicitor.

In the Supreme Court of the United States.

No. 237 of October Term, 1898.

CHALES U. COTTING, *Appellant*,
vs.
LOUIS C. BOYLE, as Attorney-General of the State of Kansas, *Appellee*.
Also, The Kansas City Stock-Yards Company, a corporation, Charles F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson, impleaded with said Louis C. Boyle, as Attorney-General of the State of Kansas, as defendants in the court below.

FRANCIS L. HIGGINGSON, *Appellant*,
vs.
LOUIS C. BOYLE, as Attorney-General of the State of Kansas, *Appellee*.
Also, The Kansas City Stock-Yards Company, a corporation, Charles F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson, impleaded with said Louis C. Boyle, as Attorney-General of the State of Kansas, as defendants in the court below.

CAUSES CONSOLIDATED.
No. 7427.
No. 7453.
In U. S. C. C., District of Kansas, First Division.

NOTICE.

To the Kansas City Stock Yards Company, a corporation, Charles F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson, and Wallace Pratt, Israel P. Dana and —— Black, their counsel and solicitors in the court below:

Please take notice that on Monday, February 6, 1899, at Washington, D. C., at the opening of the court, or as soon thereafter as counsel can be heard, a motion will be submitted for decision to the supreme court of the United States, by the appellee, Louis C. Boyle, sued as attorney-general of the state of Kansas, for the abatement, as to him, of the said consolidated suit, and that the cause be stricken from the docket of said court as to him, without revivor or continuance against any person in the place or stead of said appellee, by substitution or otherwise.

Annexed hereto is a copy of said motion, a copy of the affidavit of Louis C. Boyle, and a copy of the brief in support of said motion.

LOUIS C. BOYLE,
Sued as Attorney-General of the State of Kansas.

By DAVID MARTIN, his Solicitor.

In the Supreme Court of the United States.

No. 237 of October Term, 1898.

CHARLES U. COTTING, *Appellant*,

vs.

LOUIS C. BOYLE, as Attorney-General of the State of Kansas, *Appellee*.

Also, The Kansas City Stock-Yards Company, a corporation, Charles F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson, impleaded with said Louis C. Boyle, as Attorney-General of the State of Kansas, as defendants in the court below.

FRANCIS L. HIGGINSON, *Appellant*,

vs.

LOUIS C. BOYLE, as Attorney-General of the State of Kansas, *Appellee*.

Also, The Kansas City Stock-Yards Company, a corporation, Charles F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson, impleaded with said Louis C. Boyle, as Attorney-General of the State of Kansas, as defendants in the court below.

CAUSES CONSOLIDATED.
No. 7427.
No. 7453.
In U. S. C. C., District of Kansas, First Division.

MOTION FOR ABATEMENT OF SUIT.

And now comes said Louis C. Boyle, appellee, impleaded as a defendant in the court below as attorney-general of the state of Kansas with the Kansas City Stock-Yards Company, a corporation, Charles F. Morse, Harry P. Child, Eugene Rust and Elliott E. Richardson, defendants, at the suits of Charles U. Cotting and Francis Lee Higginson, respectively, complainants in the court below, and appellants in this court, and moves the court for the abatement as to him of this consolidated suit in this court, and that the cause be stricken from the docket of this court as to him, without revivor or continuance against any person in the place or stead of this appellee, by substitution or otherwise, and as grounds for this motion the said Louis C. Boyle, appellee, avers as follows:

1. He is not now the attorney-general of the state of Kansas, having retired from that office by reason of the expiration of his

official term, on the second Monday, being the 9th day of January, A. D. 1899.

2. Hon. A. A. Godard was duly elected to said office of attorney-general of the state of Kansas at the regular November election, 1898, and, on the 9th day of January, 1899, the said Hon. A. A. Godard duly qualified and was inaugurated as attorney-general of the state of Kansas, and the said Hon. A. A. Godard has ever since been, and now is the duly qualified and acting attorney-general of the state of Kansas.

3. There is no authority of law for a revivor or continuance by this court of a litigation of the nature of this consolidated suit against the person or the officer who becomes the successor in office of the original appellee.

4. The allegations of the bills of complaint do not in any way affect or concern the said A. A. Godard, either personally or officially.

5. No relief is prayed in said bills against any successor in office of this appellee as attorney-general of the state of Kansas.

6. The said A. A. Godard has no personal or official interest in the decree for the dismissal of the bills of complaint, or in the affirmance or reversal thereof.

7. The said A. A. Godard has no personal or official interest in the decree and judgment in favor of this appellee for costs or in the affirmance or reversal of said decree and judgment.

8. Where, as in this case, suit is brought in a United States court, against a defendant occupying a high office in the executive department of a state, and he is charged with committing wrongs under color of his office, by attempting or threatening to enforce an act of the legislature alleged to be void because in conflict with the constitution of the United States, and, after an appeal to this court, and pending such appeal, his term of office expires and he legally goes out of office, there is an abatement of such suit, and it cannot be revived or continued against the successor in office of such original defendant, either with or without the consent of such successor.

9. The only source of jurisdiction of the United States courts in these causes against this appellee, and claimed by the appellants to take the same out of the prohibition of the eleventh amendment to the constitution of the United States, was and is, although this appellee was holding the office of attorney

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general of the state of Kansas, yet he was acting and threatening to act under the alleged authority of a legislative act in contravention of the constitution of the United States and certain amendments thereto and of certain acts of congress, and that by reason of the premises this appellee did not officially represent the state of Kansas, but was wrongfully acting in his own behalf, and not as the official representative of said state.

10. An order of revivor or substitution could be made against the said A. A. Godard only upon the assumption that he does not officially represent the state of Kansas in this litigation, and on that assumption the said A. A. Godard is not the legal successor in office of this appellee as to this consolidated suit.

LOUIS C. BOYLE,
Sued as Attorney-General of the State of Kansas.

By DAVID MARTIN, his Solicitor.

In the Supreme Court of the United States.

No. 237 of October Term, 1898.

CHARLES U. COTTING, *Appellant.* *vs.* LOUIS C. BOYLE, etc., *Appellee.*	CAUSES CONSOLIDATED. No. 7427. No. 7453.
FRANCIS LEE HIGGINSON, *Appellant.* *vs.* LOUIS C. BOYLE, etc., *Appellee.*	In U. S. C. C., District of Kansas, First Division.

AFFIDAVIT OF LOUIS C. BOYLE.

The United States of America,
State and District of Kansas, County of Shawnee, } ss.

Louis C. Boyle, of lawful age, being duly sworn, deposeth and saith: That he is the appellee above named; that, at the regular November election in the state of Kansas in the year 1896, he was duly elected to the office of attorney-general of the state of Kansas for the term of two years and until his successor should be elected and qualified, said term to commence on the second Monday of January, A. D. 1897; that he duly qualified and was duly inaugurated as such attorney-general on the second Monday of January, 1897, and he acted as such attorney-general continuously from that time forth until the second Monday of January, A. D. 1899.

Affiant further says, that at the regular November election in the state of Kansas in the year 1898, Hon. A. A. Godard was duly elected to said office of attorney-general of the state of Kansas for the term of two years and until his successor shall be elected and qualified, said term commencing on the second Monday of January, A. D. 1899; that the said A. A. Godard duly qualified and was duly inaugurated as such attorney-general on said second Monday, being the 9th day, of January, A. D. 1899, and immediately thereafter entered upon the duties of said office, and ever since said time the said A. A. Godard has been and he now is the duly qualified and acting attorney-general of the state of Kansas.

Affiant further says, that he is not now the attorney-general

of the state of Kansas, either *de jure* or *de facto*, but Hon. A. A. Godard is the attorney-general of the state of Kansas *de jure*, and is duly acting as such officer.

[SIGNED] LOUIS C. BOYLE.

Subscribed and sworn to before me by the said Louis C. Boyle, this 10th day of January, 1899. GEO. F. SHARITT, *Clerk*.

[SEAL.] By F. H. HOLT, *Deputy*.

In the Supreme Court of the United States.

No. 237 of October Term, 1898.

CHARLES U. COTTING, *Appellant*,
vs.
LOUIS C. BOYLE, as Attorney-General of the State of Kansas, *Appellee*.
Also, The Kansas City Stock-Yards Company, a corporation, Charles F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson, impleaded with said Louis C. Boyle, as Attorney-General of the State of Kansas, as defendants in the court below.

FRANCIS L. HIGGINSON, *Appellant*,
vs.
LOUIS C. BOYLE, as Attorney-General of the State of Kansas, *Appellee*.
Also, The Kansas City Stock-Yards Company, a corporation, Charles F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson, impleaded with said Louis C. Boyle, as Attorney-General of the State of Kansas, as defendants in the court below.

CAUSES CONSOLIDATED.
No. 7427.
No. 7453.
In U. S. C. C., District of Kansas, First Division.

BRIEF OF LOUIS C. BOYLE, SUED AS ATTORNEY GENERAL, ETC., IN SUPPORT OF MOTION FOR ABATEMENT OF SUIT.

I.—STATEMENT.

On December 19, 1898, a motion was submitted by us for the dismissal of this appeal for want of necessary parties. We then caused enough of the transcript of the record to be printed to enable the court to act understandingly upon that motion without referring to the original record. The extracts then printed are ample for all purposes of the present motion, when taken in connection with the affidavit of Louis C. Boyle, a printed copy of which accompanies the motion. Whether the Kansas City Stock-Yards Company and its officers who were made parties defendant in the court below were or are parties to

the appeal, is immaterial in the consideration of this motion, but we have given due notice to their counsel.

It was charged, in substance, in the bills, that the Kansas legislature of 1897 had enacted a bill for the purpose of regulating the charges of the proprietors of public stock yards, which, if put into operation, would materially reduce the revenues of the Kansas City Stock-Yards Company, a Kansas corporation whose yards are bisected by the boundary line between the states of Kansas and Missouri, but lying principally in this state; that said act contravenes certain provisions of the constitution of the United States and the amendments thereto, and certain acts of congress, and therefore was and is null and void. The following is a quotation from the fourth paragraph of each of the bills, namely:

"That the said so-called act is now by the said defendant, Louis C. Boyle, as attorney-general of the state of Kansas, alleged to be in full force, virtue and effect as a valid law of the state of Kansas, the said so-called act providing among other things that 'it shall be the duty of the attorney-general to prosecute all violations of the provisions thereof.'" Extracts, pp. 8, 31.

The following is a copy of paragraph 12 of each of the bills:

"That by said section 8 of said so-called act, referred to as 'Exhibit A,' it is made the duty of the said Louis C. Boyle, as attorney-general of the state of Kansas, to prosecute all of the violations of the provisions of said act; that your orator fears that the said attorney-general may cause the defendant corporation, and any and all of its officers and agents who shall violate any of its provisions, to be arrested and prosecuted; that he will attempt to enforce said so-called act through the courts of Wyandotte county, Kansas, and through the courts of the state of Kansas, by a multiplicity of criminal actions or proceedings against each and every person failing or refusing to comply with the provisions thereof, including the said defendant corporation and its officers and agents, thereby greatly harassing and annoying the said defendant corporation and its officers and agents and causing them great expense and consuming valuable time, unless the said defendant corporation, its officers and agents, shall put in force at once the said charges and prices specified in said sections 4 and 5 of said so-called act and shall obey and carry out all of the terms and provisions of said act and each section thereof. And your orator fears that the said Louis C. Boyle, as attorney-general, will proceed at once to carry into force said arrests and prosecutions unless immediately

restrained by the order and injunction of this honorable court." Extracts, pp. 14, 15, 38.

There are other allegations to the effect that said Louis C. Boyle, as attorney-general of the state of Kansas, had threatened to enforce the provisions of said act, and that the officers of the stock-yards company were so in fear of prosecutions by him that they had notified the complainants, who were stockholders in said stock-yards company, that said officers would put into force and effect the rates prescribed by said act, and had ordered accordingly. The relief demanded in each case was the same. We quote the essential part of the prayer in the Higginson case, as follows:

"Therefore your orator prays that the decree of this honorable court, adjudging that it is the duty of the said defendant corporation and the said Charles F. Morse, acting president, general manager and sole managing director of said defendant corporation, for the benefit of said corporation and of your orator and the other stockholders of said corporation, to revoke at once the orders and directions to put in force the provisions of said so-called act, referred to herein as 'Exhibit A,' and the maximum charges and prices therein specified, and that it is the duty of said defendant corporation and the said Charles F. Morse, acting president, general manager and sole managing director, for the pecuniary benefit of your orator and the other stockholders of said defendant corporation, to maintain and operate the stock-yards of said defendant corporation herein named in the same manner as they have been heretofore economically and successfully operated, and to charge for the services to be furnished, for yardage and other matters, the present existing charges (which are fair, reasonable, and just); and also to sell and deliver hay, corn and other grain to stock-raisers, shippers and other persons upon the same terms and for the same prices and in the same way such articles are now sold by said defendant corporation (which said prices, under all the circumstances and conditions, are fair, reasonable, and just); and that said defendant corporation, and each of its said officers and agents named as defendants herein, shall be enjoined from obeying, observing or putting into force any of the provisions of said so-called act; and that said order and injunction issue against said defendant corporation and the said Charles F. Morse, as acting president and sole managing director thereof, and each of the other officers and agents of said defendant corporation, made parties defendant herein, commanding them and each of them to refrain from putting into force the provisions of the said so-called act or any part thereof.

"That the said Louis C. Boyle, as attorney-general, be adjudged and decreed from attempting, as against said defendant corporation or any of its officers, agents, servants, or employees, to enforce the provisions of the said so-called act or any part thereof. And also, that said order and injunction issue against the said Louis C. Boyle, as attorney-general, commanding him to refrain from harassing and annoying, by prosecution or otherwise, under the provisions of the said so-called act, the defendant corporation, the said Charles F. Morse, or any of the other officers, servants, agents or employees of the said defendant corporation herein named.

"That the final mandatory order and injunction of this court in this case issue, compelling said defendant corporation, and the said Charles F. Morse, and each of the other officers and agents of said defendant corporation herein named, to operate and maintain the said stock-yards of the said defendant corporation in the state of Kansas as they are now operated and maintained, and that they exact and collect the same charges for services performed and the same prices now demanded and received, wholly disregarding the said so-called act and all of the provisions thereof.

"That a final order, judgment and decree issue that the said so-called act, approved March 3, 1897, herein referred to as 'Exhibit A' and made a part of this bill of complaint, is unconstitutional and void and of no validity, force or effect whatever; and that all of said defendants and each of them be enjoined from enforcing or attempting to enforce the said so-called act or any of the provisions thereof.

"That a preliminary injunction may issue at once, upon the filing of this bill of complaint, against the said defendant corporation and each of its officers and agents named as defendants herein, during the pendency of this suit, strictly commanding and enjoining the said defendants, and each of them, under the pains and penalties which may fall upon them and each of them in case of disobedience, that they forthwith and until the further order, judgment and decree of this court, desist from putting into force the said maximum rates, charges and prices specified in said so-called act aforesaid; and against the said Louis C. Boyle, as attorney general, commanding and enjoining him to desist from enforcing or attempting to enforce the said so-called act against said defendant corporation and its officers and agents named as defendants herein, by arrest or otherwise, through the courts of the state or otherwise."

The following is an extract from the final decree:

"Now come the parties herein, and by their respective solicitors, on this 28th day of October, 1897, and the foregoing causes having been heretofore, on the 20th day of October, 1897, duly

heard and submitted upon the pleadings, proofs, stipulations of the parties, master's report, exceptions thereto, and the arguments of counsel thereon, and the same having been duly taken under advisement by the court and due deliberation having been had, it is ordered, adjudged and decreed that the said bills of complaint herein, and each of them, be and the same are hereby dismissed, with costs taxed in favor of the defendant, Louis C. Boyle, as attorney-general of the state of Kansas." Extracts, pp. 56, 57.

There was no prayer in either of the bills against the successor or successors of Louis C. Boyle, as attorney-general of the state of Kansas; indeed, the cause of complaint against the attorney-general was entirely personal to the said Louis C. Boyle. The allegations cannot be applied to A. A. Godard, the present attorney-general. For aught we know, he concurs in opinion with counsel on the other side, that the Kansas act is unconstitutional, and may agree that the final decree of the circuit court ought to be reversed and the legislative act treated as a dead letter. Certainly he can have no personal or official interest in the affirmance or reversal of the judgment in favor of this appellee for costs—a very large sum.

The affidavit of Louis C. Boyle following the motion shows that he is no longer the attorney-general of the state of Kansas, because his official term expired January 9, 1899 and A. A. Godard then became attorney-general.

II.—ARGUMENT.

The original jurisdiction of this court is quite limited, and its appellate power is circumscribed. The second paragraph of section 2 of article 3 of the constitution reads as follows:

"In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exeptions and under such regulations as the congress shall make."

Article 11 of amendments to the constitution operates as a limitation upon the jurisdiction of all the federal courts. It is thereby declared that "the judicial power of the United States shall not be construed to extend to any suit in law or equity

commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state."

At the outset of these suits, we claimed that they were virtually against the state through the attorney-general, and that they could not be maintained because within the prohibition of the eleventh amendment. But we were met on this ground in the first paragraph of the opinion of the court, by Judge FOSTER, as follows:

"There has been some discussion about the jurisdiction of this court, but it is not seriously challenged; and the objection by the attorney-general that he is improperly made a party defendant is not well taken, as the court has jurisdiction to enjoin a state officer from enforcing an unconstitutional law. Reagan v. Trust Co., 154 U. S. 388."

Turning to the authority cited, we find that Mr. Justice BREWER has classified the cases where it has been held that suits were without or within the prohibition of the eleventh amendment. Most of the cases without the prohibition have been those where a state officer has acted under claim of authority derived from a legislative act alleged to be in contravention of the federal constitution. In such cases, for the purposes of the litigation, the defendant is stripped of his official character, and he is charged, as in this case, with an intent to violate the plaintiff's rights; of course, he cannot protect himself by an unconstitutional statute, and being a mere personal wrong-doer, he can have no successor as such. If it be admitted that the officer is the representative of the state in such case, then it must be dismissed for want of jurisdiction.

The subject of revivor or continuance of a surviving suit in the event of *the death* of a party seems now to be well provided for by an act of congress and duly authorized rules of court. Section 31 of the judiciary act of 1789 (1 U. S. Stat. at Large, 90) was as follows:

"SEC. 31. That where any suit shall be depending in any court of the United States, and either of the parties shall die before final judgment, the executor or administrator of such deceased party who was plaintiff, petitioner, or defendant, in case the cause of action doth by law survive, shall have full power to prosecute or defend any such suit or action until final judgment; and the defendant or defendants are hereby obliged to answer thereto accordingly; and the court before whom such

cause may be depending is hereby empowered and directed to hear and determine the same, and to render judgment for or against the executor or administrator, as the case may require. And if such executor or administrator, having been duly served with a *scire facias* from the office of the clerk of the court where such suit is depending twenty days beforehand, shall neglect or refuse to become a party to the suit, the court may render judgment against the estate of the deceased party in the same manner as if the executor or administrator had voluntarily made himself a party to the suit. And the executor or administrator who shall become a party as aforesaid shall, upon motion to the court where the suit is depending, be entitled to a continuance of the same until the next term of the said court. And if there be two or more plaintiffs or defendants, and one or more of them shall die, if the cause of action shall survive to the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, the writ or action shall not be thereby abated; but such death being suggested upon the record, the action shall proceed at the suit of the surviving plaintiff or plaintiffs against the surviving defendant or defendants."

In the revision of 1873 this section is divided, and now appears as sections 955 and 956, Revised Statutes.

In Green v. Watkins, 6 Wheat. 260, decided at February term, 1821, the defendant in error, in an action respecting realty, moved to dismiss the writ of error upon the suggestion of the death of the demandant and plaintiff in error, pending the proceedings in this court. Justice STORY, delivering the opinion of the court, referred to the distinction between the death of parties before and after judgment and while a writ of error is depending, and said:

"In the former case, all personal actions by the common law abate; and it required the aid of some statute like that of the thirty-first section of the judiciary act of 1789, C. 20, to enable the action to be prosecuted by or against the personal representative of the deceased when the cause of action survived. In real actions the like principle prevails, for a still stronger reason, for, by the death of either party, the right descends to the heir, and a new cause of action springs up, and the plea is not therefore in the same condition as it was in the lifetime of the party. But in cases of writs of error upon judgment already rendered a different rule prevails," etc.

The opinion concludes as follows:

"In respect to real actions, this is the first time the question has presented itself upon a writ of error, where the death of

either party has occurred *pendente lite*. There is no doubt that the heir or privy in estate who is injured by an erroneous judgment may prosecute a writ of error to reverse it. And there seems no good reason why, in case of the death of his ancestor pending proceedings, he may be not be admitted to become a party, or be cited to become a party, to pursue or defend the writ, in the same manner as in personal actions. The death of neither party produces any change in the condition of the cause, or in the rights of the parties. It would seem reasonable, therefore, that the suit should proceed, and not be dismissed or abated. In the absence of all authority which binds the court to a different course, we are disposed to adopt this doctrine, and shall promulgate a general rule on the subject."

Accordingly, at the same term, this court adopted a rule, published as No. 31, in 6 Wheaton, as follows:

"Whenever, pending a writ of error or appeal in this court, either party shall die, the proper representatives of the personalty or realty of the deceased party, according to the nature of the case, may voluntarily come in and be admitted parties to the suit, and thereupon the cause shall be heard and determined as in other cases; and if such representatives shall not voluntarily become parties, then the other party may suggest the death on the record, and thereupon, on motion, obtain an order that, unless such representatives shall become parties within the first ten days of the ensuing term, the party moving for such order, if defendant in error, shall be entitled to have the writ of error or appeal dismissed; and if the party so moving shall be plaintiff in error, he shall be entitled to open the record, and on hearing have the same reversed, if it be erroneous; provided, however, that a copy of every such order shall be printed in some newspaper at the seat of government in which the laws of the United States shall be printed by authority, three successive weeks, at least sixty days before the beginning of the term of the supreme court then next ensuing."

This is still in force as the first paragraph of rule 15, except as to the place of publication of a copy of the order.

In Packer's Heirs v. Thomas, 7 Wheat. 530, the suit was brought against Macker for an undivided moiety of a certain tract of land. After service of summons, Macker died without appearance. A rule was obtained by the plaintiff below upon the heirs of Macker to show cause why the suit should not be revived against them. This rule was served, but no cause being shown to the contrary, an order of revivor was taken, and at a subsequent term judgment by default was rendered against the

heirs, from which judgment a writ of error was prosecuted. The court, through Justice WASHINGTON, delivering its opinion, said:

"The main question for the decision of this court is, whether the circuit court erred in directing the suit to be revived against the heirs of Macker, and rendering judgment against them? The court consider this point to have been decided in the case of Green v. Watkins, 6 Wheat. 260. The question there was, whether, in real actions, the death of either party, after a writ of error sued out, abates the suit; and it was decided that it did not. But in examining the general principles of law upon the subject of abatement by the death of parties, it was distinctly laid down that, in real and personal actions, the death of either party before judgment did, at common law, abate the suit; and that the thirty-first section of the judiciary act of 1789, chapter 20, was necessary to enable the action to be prosecuted by or against the representatives of the deceased party, when the cause of action survived. But this section is clearly confined to personal actions, as the power to prosecute or defend is given to the executor or administrator of the deceased party, and not to the heir or devisee."

The closing sentence of the opinion is as follows:

"The error in this case was in ordering the suit to be revived and prosecuted against the heirs of the original defendant, and proceeding to render judgment against them upon a summons and count against the original defendant, all which sufficiently appears upon the face of this record."

And the suit was accordingly abated.

In the new work of Garland and Ralston on Federal Practice, vol. 1, § 196, they say:

"SEC. 196. Previous to the act of March 3, 1875, there was no adequate remedy, by the representatives of deceased persons, by writ of error or appeal, where the deceased was a party to a final judgment or decree rendered in a circuit court, and died before the two years allowed for taking an appeal or bringing a writ of error had expired. But the ninth section of that act provides in such cases as follows: 'That whenever either party to a final judgment or decree, which has been or may be rendered in any circuit court, has died or shall die before the time allowed for taking an appeal or bringing a writ of error has expired, it shall not be necessary to revive said suit by any formal proceeding aforesaid. The representative of such deceased party may file in the office of the clerk of such circuit court a duly certified copy of his appointment, and thereupon

may enter an appearance or bring writ of error as the party he represents might have done. If the party in whose favor such judgment or decree was rendered has died before appeal taken or writ of error brought, notice to his representative shall be given from the supreme court, as provided in case of death of a party after appeal taken or writ of error brought.'"

There is no congressional legislation, however, authorizing this court to revive or continue in force an appeal or writ of error against a successor in office of the original defendant, whether a state or a national officer, and this court cannot bring in such a new party without additional legislation.

In The Secretary v. McGarrahan, 9 Wall. 298, the suit was brought against the secretary of the interior, Hon. O. H. Browning, to compel him by mandamus to issue to McGarrahan a patent for certain lands. The writ of mandamus was directed to the secretary or to his successor in office. Four months before the decision of the court was announced, Hon. O. H. Browning resigned his office, and was succeeded by Hon. J. D. Cox. On page 313 the court says:

"Service was made upon O. H. Browning, secretary of the interior; but the fact is conceded, or not denied, that he had resigned and gone out of office four months before the decision of the court was announced. When he resigned of course the suit abated, but the court gave judgment against him as if he were still in office, and decreed that the writ of mandamus should be directed to him and to his successor in the office. Complaint may well be made by that party, that he no longer possessed the power to execute the commands of the writ, and the present secretary may well complain that he is adjudged to be in default though he never refused to allow the relator to purchase the land, and that the judgment was rendered against him without notice and without any opportunity to be heard."

It will be observed that the court holds that upon the resignation of Browning the suit abated, and that he (Browning) might well complain that he no longer possessed the power to execute the commands of the writ. It may be urged, in the case at bar, that L. C. Boyle, one of the defendants, has no further standing in this court to make this, or any other motion in the present or future progress of this case; that in the event an attempt was made to revive this suit in the name of A. A. Godard, the present attorney-general, he (Godard) might properly invoke the principle as announced in The Secretary

v. McGarrahan, *supra*. Yet, as has already been noted, the supreme court has expressly declared that a party standing in a similar relation to that of L. C. Boyle might call the court's attention to the status of the case, whereupon the suit would abate. On principle, no other conclusion could be reached.

The purpose of the suits brought by Cotting and Higginson against said L. C. Boyle was to restrain the said Boyle from attempting to enforce what is alleged by plaintiffs to be an unconstitutional law. Plaintiffs, in their pleadings, as well as in briefs, repeatedly disavowed any intention of attempting to restrain the state of Kansas from doing anything, but assert that their action is leveled against L. C. Boyle, who, under the color of his office, is attempting to do certain unlawful things, injuriously affecting the rights of plaintiffs. Thus it will be seen that the restraining order sued out against the said Boyle ran against him personally, and in no way could affect the office of attorney-general of the state of Kansas. It must be borne in mind that the claim is made that the said Boyle was attempting, by reason of his official position as attorney-general, to enforce the law of which plaintiffs complain. Now, as soon as the said Boyle ceases to be attorney-general, of necessity the suit must abate, because there exists no longer that condition of affairs upon which plaintiffs founded their actions. When these matters are brought to the attention of this court in any way, and especially by one of the parties who has been interested in the controversy, and is still interested, by reason of costs, it will be sufficient to give the court notice so that it may make a proper order abating the suit.

Under no conceivable theory could A. A. Godard, the present attorney-general, be substituted for L. C. Boyle. Godard is not the representative of Boyle. If counsel contend that Godard can be substituted for Boyle because Godard now occupies the office of attorney-general, then they admit that the suit was against the office of attorney-general and not against the individual who occupied the office, and they would thus run up against the proposition that they are seeking to restrain the state, which would be fatal to their proceedings.

One of the essential allegations of the bills filed by Cotting and Higginson against Boyle was, that the said Boyle, as attorney-general, had expressed his opinion to the effect that the law

under controversy was constitutional, and that he intended to immediately proceed to its enforcement. And on the theory that the property of plaintiffs stood in imminent peril from the alleged intended assault on it by the said Boyle, restraining orders were issued against him. How can A. A. Godard be made a party to this proceeding in view of these allegations?

The leading case on this question is United States v. Boutwell, 84 U. S. 604 (17 Wall. 604). Mandamus proceedings were brought against G. S. Boutwell, secretary of the treasury, to compel him to pay a certain order on the treasury of the United States. The suit was commenced in the supreme court of the District of Columbia. That court refused the mandamus and the case was brought on error to the supreme court of the United States. After the case reached the supreme court of the United States Boutwell resigned his office, and an attempt was made to substitute Hon. W. A. Richardson, his successor. Mr. Justice STRONG delivered the opinion of the court. On page 607 he says:

"On the death or retirement from office of the original defendant the writ must abate, in the absence of any statutory provision to the contrary. When the personal duty exists only so long as the office is held, the court cannot compel the defendant to perform it after his power to perform has ceased. And, if a successor in office may be substituted, he may be mulcted in costs for the fault of his predecessor, without any delinquency of his own. Besides, were a demand made upon him, he might discharge the duty, and render the interposition of the court unnecessary. At all events, he is not in privity with his predecessor, much less is he his predecessor's personal representative. As might be expected, therefore, we find no case in which such a substitution as is asked for now has ever been allowed, in the absence of some statute authorizing it. On the contrary, after the statute of 9th Anne, chapter 20, section 1, it was the acknowledged doctrine in England that the rules and practice as to abatement by death, resignation or removal from office were the same in cases of mandamus as in personal actions. By that statute, it was enacted that the prosecutor or relator may plead to or traverse all or any of the material facts averred in the return, the defendant having liberty to reply, take issue, or demur, and it was directed that such further proceedings might be had as might have been had if the prosecutor had brought his actions on the case for a false return. Thus, mandamus became in effect a personal action against the defendant. This statute was in force in Maryland when the District of Columbia

questions, fully argued at the bar, touching the jurisdiction of the court and the merits of the bill."

Practically, all the cases above referred to were cases in which proceedings were brought against the head of some department of the general government. However, the same reasoning would apply in a suit brought against an attorney-general of a state, especially when that officer is one of the executive officers of the state government, as the attorney-general is in Kansas. If Mr. Godard can be made a party to this suit, it is because he is attorney-general, for in no other way could he be the representative of L. C. Boyle. If, then, Mr. Godard can be substituted for L. C. Boyle, the restraining order in the first instance ran against the office of attorney-general and not against the individual who happened to occupy that office at that time, and such a proceeding would be inhibited by the eleventh amendment of the constitution of the United States.

L. C. BOYLE.

DAVID MARTIN, of Counsel.

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Brief of Godard for Appt.

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IN THE

Supreme Court of the United States.

October Term, 1899.

CHAS. U. COTTING AND FRANCIS LEE HIGGINSON, *Appellants*,

vs.

A. A. GODARD, AS ATTORNEY-GENERAL OF THE STATE OF KANSAS, AND THE KANSAS CITY STOCK YARDS COMPANY, *et al.*, *Appellees*.

No. 43.

STATEMENT, BRIEF AND ARGUMENT FOR ATTORNEY-GENERAL.

A. A. GODARD,
Attorney-General.

B. H. TRACY,
Assistant Attorney-General.

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STATEMENT.

On behalf of the Attorney-General of the state of Kansas, we desire to suggest the following statement of facts in addition to those mentioned in the brief of the appellants, and to suggest corrections to that statement as hereinafter set forth.

The Kansas Stock Yard Company was organized as a Kansas corporation in 1871, and by the provisions of its charter had an authorized capital of $100,000. On February 13, 1875, the capital stock was increased to $200,000. In 1876 the company reorganized under the name of the Kansas City Stock Yard Company, with an authorized capital of $500,000. In November, 1877, this capital was increased to $1,000,000. On Decem-

ber 10, 1883, this company again reorganized, as the Kansas City Stock Yards Company, with a capital stock of $2,500,000. In July, 1887, the authorized capital stock was increased to $5,000,000; and in February, 1894, it was again increased, this time to $7,500,000, where it now remains.

Chapter 23, section 14, of the General Statutes of Kansas of 1868, provided that corporations organized under the laws of the state of Kansas might increase their capital stock to any amount not exceeding twice the original authorized capital. This law continued in force until 1883, when the legislature, by chapter 47 of the laws passed at that session, authorized corporations organized under the laws of Kansas to increase their capital to any amount not exceeding three times the original capital. This has been the law in Kansas ever since.

Under the statutes of Kansas in force until since the commencement of this action, a corporation might be created by the mere act of filing a charter with the secretary of state, and each of the above-mentioned corporations was so created. The capital stock of these corporations was increased, as above referred to, by resolution of the board of directors, which is the method authorized by law. When the charter of the Kansas City Stock Yard Company was filed the Kansas Stock Yard Company had outstanding $192,000 as capital stock, or within $4000 of its authorized capital. When the Kansas City Stock Yards Company was organized the Kansas City Stock Yard Company had outstanding $995,000 of capital stock, or within $5000 of its authorized capital. It is apparent that the second and third charters referred to were filed in order to permit the

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issue of more stock. The stock of the Kansas City Stock Yard Company issued at the time of its organization was given to the stockholders of the Kansas Stock Yard Company in exchange for their stock; and the stock of the Kansas City Stock Yards Company issued at the time of its organization was given to the stockholders of the Kansas City Stock Yard Company, two shares of the new stock for one share of the old stock, which was equivalent to a stock dividend of $995,000. All of these stocks were issued upon a basis of $100 per share.

Colonel Morse, who was at all times the general manager of these corporations, testified that these reorganizations were had for the sole purpose of permitting the issue of additional capital stock. (Record, p. 345. See also finding 6, record, p. 61.)

These several corporations should be considered for the purposes of this case as a single continuing organization. No change in stockholders or officers was made in either of the reorganizations. They were all organized for the same purposes, engaged in the same business at the same place, and no changes were made in the management, modes of doing business, or the prices charged. The name was changed first by the addition of a word, next by the addition of a letter, and the provisions of the Kansas statute limiting the power of corporations to increase their capital stock were so avoided.

In 1871 the Kansas Stock Yard Company was organized, with a paid up capital of $96,000. In 1876 stock was sold to the amount of $73,000; in 1878 stock to the amount of $42,400 was sold; in 1881, $15,000; in 1887, $535,000; in 1890, $900; in 1893, $55,000; in 1894, $1,667,500 worth of stock was sold, all

of which was disposed of for cash and at par, making a total of $2,484,500 received for subscribtions and the sale of stock, which is all the money that has ever been invested in the Kansas City Stock Yards Company or any of its predecessors by the stockholders thereof. Whatever property or rights the company now owns have all accrued from the investment of said sum, and from that investment have also been paid the dividends hereinafter recited.

Stock dividends purporting to represent investments by purchase, and by improvements made out of the earnings of the corporation, have been declared from time to time to the stockholders. In addition, dividends of stock have been made from time to time, purporting to represent increased value of the holdings of the company, and cash dividends have been declared with great regularity, as will be seen hereafter.

The stock dividends purporting to represent permanent investments made from the earnings of the company have been as follows: 1875, $96,000; 1876, $66,300; 1877, $331,300; 1878, $235,000; 1887, $456,933; 1890, $404,000; 1894, $268,100; 1896, $433,450; 1897, $78,090—making a total of $2,369,173 worth of stock issued to the stockholders without the payment of any money by them, and being within $115,327 of the amount of stock which was issued and paid for in cash.

In addition to these stock dividends, further stock dividends were declared on account of the increased value of the lands held by the company in the following amounts, to wit: 1879, $40,000; 1884, $995,000; 1888, $1,058,067; 1894, $500,000—an

aggregate of $2,593,067, or $109,567 more than the total amount of stock which had been paid for in cash.

In other words, of the $7,368,650 of capital stock issued and now outstanding by the Kansas City Stock Yards Company, $2,484,500 was paid for in cash, and $5,962,240 was issued to the stockholders without the payment of a cent, and as profit upon the investment of the sum first named.

In addition to the foregoing, cash dividends have been declared and paid to the stockholders to the amount of $4,660,976; the dates and amounts of such dividends are shown in the table below — making the total amount of dividends which have been declared upon the investment of $2,484,500 mentioned above to be $9,623,216. (Record, p. 79.) Included in the cash dividends before mentioned were some dividends really made as real-estate dividends; that is, real property was conveyed to other companies or individuals who acted as trustees and took the property for the stockholders of the Stock Yards Company. This real estate was charged to the stockholders at its cost value, although the evidence shows that it had increased, and some of it was repurchased by the Stock Yards Company at an increased value. The table following shows the dividends which have been declared each year for twenty-five years. In 1873 and in 1880 no dividends were declared, but those years are taken into consideration in determining the average dividends paid by the company as stated. The figures in the seventh and eighth columns for each year indicate the amount of cash stock and the total issue of stock outstanding in that year.

Year.	Cash dividends.	Stock dividends.	Total dividends.	Rate per cent. upon stock paid for.	Rate per cent. upon stock outstanding.	Capital stock paid for in cash.	Total issue of stock.
1872	$13,890	.....	$13,890	14.47	14.47	$96,000	$96,000
1874	33,600	.....	33,600	35.00	35.00	96,000	96,000
1875	16,800	$96,000	112,800	117.50	117.50	96,000	96,000
1876	9,600	66,300	75,900	44.91	39.53	169,000	192,000
1877	26,504	331,300	357,804	211.72	108.00	169,000	331,300
1878	28,000	235,000	263,000	124.40	39.69	211,400	662,600
1879	21,150	4,000	61,150	28.92	6.24	211,400	980,000
1881	98,720	.....	98,720	43.60	10.07	226,400	980,000
1882	99,480	.....	99,480	43.90	10.00	226,400	995,000
1883	321,295	.....	321,295	142.00	32.39	226,400	995,000
1884	119,395	995,000	1,114,391	492.21	55.99	226,400	1,990,000
1885	149,250	.....	149,250	65.91	7.50	226,400	1,990,000
1886	119,400	.....	119,400	52.73	6.00	226,400	1,990,000
1887	150,600	456,933	607,533	79.79	30.53	761,400	1,990,000
1888	282,800	1,058,067	1,340,867	176.10	33.19	761,400	4,040,000
1889	323,200	.....	323,200	42.44	8.00	761,400	4,040,000
1890	323,200	404,000	727,200	95.39	18.00	762,300	4,040,000
1891	311,143	.....	311,143	40.82	7.00	762,300	4,444,900
1892	370,192	.....	370,592	48.61	8.33	762,300	4,444,900
1893	296,694	500,000	796,694	97.46	16.11	817,400	4,944,900
1894	451,133	268,100	719,233	28.95	14.39	2,484,500	5,000,000
1895	554,816	.....	554,816	22.33	8.00	2,484,500	6,935,200
1896	429,160	433,450	862,610	34.72	12.44	2,484,500	6,935,200

Average dividend upon cash stock for twenty-five years, 82.95 per cent.
Average dividend upon all stock issued for twenty-five years, 25.53 per cent.

In addition to the dividends mentioned in the foregoing table, a cash dividend of $110,558 was declared on February 1, 1897, and a stock dividend of $78,090 on the same day, making a total of $188,648, equal to 7.59 per cent. upon the cash stock and 2.56 per cent. upon the total stock outstanding.

Included in the property owned by the Kansas City Stock Yards Company is the horse and mule department, which was purchased in 1893 and 1894 at a cost of $230,643.86, the improvements thereon costing $130,000, making a total cost of $360,643.86. This property is situated in the state of Missouri, and is devoted entirely to the horse and mule business, and is managed by a party who handles the business for one-

half of the net profits. The business of this department is done on a different basis from the other departments. Forty cents per day is paid for each horse and twenty-five cents for each mule, which includes feed and water. Where the horses are fed, cleaned and groomed in stalls the price is fifty cents per day. It will be seen that these charges are not affected by the Kansas statute, and would not be affected by it if the horse and mule barns were situate in Kansas. The net income for the horse and mule business of 1896 was $3,790.75, or a small fraction over one and one-half per cent. on the original cost of the property, or eighty-eight one-hundredths of one per cent. of the value of the property as found by the master. (Record, pp. 66 and 72, findings 24 and 34.) It is very evident that the horse and mule business is not connected with the business sought to be regulated by the Kansas statute, that there is no necessity for the business to be done there, and no reason exists why the charges for feeding and yardage of other animals should be high enough to pay the loss on the horse and mule business.

The company conducted its business without a horse and mule market until 1894, and since the establishment of such market the business done there has been very small. In 1896 the number of animals received there amounted to about one per cent. of the entire number received at the yards. (Appellant's brief, p. 10.)

The company owns real and personal property not used in its stock-yards business worth about $1,200,000. (Record, p. 75, finding 41.) The greater part of this property is non-productive, and the income derived from all of it is very small.

On page 11 of the brief of the appellants they call attention to the report of the master, in which he mentions the fact that the affairs of the company have been wisely, efficiently and economically administered; but no mention is made of the criticism of the master which is included in the same finding, being finding No. 40 (record, p. 74), in which it is stated that unnecessary expenditures have been made in the purchase of real estate, and in the provisions made for the doing of the horse and mule business in Missouri. On page 12 of the brief it is stated that it appears from the testimony that the horse and mule department was an absolutely essential part of the business for the necessity of stock-raisers and the competition of other stock-yards, and to support this claim they cite pages 846 and 847 of the record. An examination of those pages discloses that the reference is made to the exceptions filed on behalf of complainants, and not to any testimony in the case. The same reference is made to support the averment that no more was expended upon the horse and mule department than was reasonably necessary therefor. We insist that the testimony does not show that the horse and mule department was necessary for the good of the business of the Kansas City Stock Yards, or that it was an aid to that business.

We urge that the appellants are in error in their statements regarding the mode in which the master arrived at his conclusion touching the value of the property of the Stock Yards Company.

In the forty-third finding of fact (record, p. 77), the master says:

"In approaching the question of the value of the real estate owned and used by the defendant company for stock-yards purposes, I do so with a full sense of the natural and inherent difficulties of the problem, augmented many fold, in this instance, by the confusion and well-nigh hopeless conflict between the evidence of opposing witnesses of apparently equal intelligence, fairness, and means of information. So far as it has been possible, I have given credit and effect to all the testimony offered by the parties, and the figures which follow are believed to express, as accurately as it is possible to ascertain and state it, the value, separately and collectively, of the various tracts of land which make up the principal element of the company's plant. The evidence on this subject was all adduced on the hypothesis that the land was divested of all improvements, but *upon consideration of all adventitious advantages accruing to it from its location and environment, and upon this basis my estimates of the value of such real estate are made, and are as follows.*"

In this connection we desire to call the attention of the court to an expression used by the master, which is repeated frequently in the brief of the appellants with an erroneous conclusion drawn therefrom. Where the master speaks of the "well-nigh hopeless conflict between the evidence of opposing witnesses of apparently equal intelligence, fairness, and means of information," he undoubtedly does not intend to say that all of the witnesses on each side of the case were of apparently equal intelligence, fairness, and means of information, but merely that there were such witnesses or groups of witnesses, but he does not say which are or are not referred to by this expression.

The appellants are also in error in their reference in the statement of facts to the stipulation concerning the gross income and expenditures for the year 1896 by the Stock Yards

Company. Referring to exhibit "S S," on page 81 of the record, and exhibit "F F," on page 82 of the record, it will be seen that the full extent of these stipulations is to settle questions of evidence and determine the manner and purpose for which expenditures were made during the years covered thereby, and there is nothing in the stipulations which indicates to what account those expenditures should be charged upon the books of the company, and whether the items therein should be considered in this case as belonging to the expense of operation and maintenance or to construction or to any other expense or branch of the stock-yards business. Appellants are also in error in the figures made through the statement of facts, in that they have included in the area or amount of property owned by the Stock Yards Company that which is not employed in its business, and in reciting the value of the property of the said company the same error has crept in. By reason of these errors the figures contained in the early part of the complainant's brief, and relating to the value and amount of the assets of the Stock Yards Company and the percentage of income the law permits, should not be taken into consideration, this for reasons which we shall explain more fully under the appropriate headings of this brief.

I.

The Law in Question does not Conflict with the Equality Clause of the Fourteenth Amendment to the Federal Constitution.

Chapter 240 of the laws of Kansas passed at the session of 1897, shown in appendix "A" to the brief of the appellants filed herein, is general in its terms, and is made to apply to all stock-yards which shall do a certain volume of business within the state of Kansas. There is nothing on the face of the law which indicates that any particular stock-yards were selected as the subjects of legislation. The objections made that the law is class legislation rest principally upon the statements of the appellants, and not upon anything of which this court can take judicial notice, or upon anything which is contained in the record in this case. There is no ambiguity apparent in the law, and consequently no reason or excuse for the introduction of legislative journals as aids to its construction. Such journals are only secondary modes of ascertaining legislative intention, and they may be resorted to only when the meaning of the language of an act is itself doubtful.

23 Am. & Eng. Encycl. of L. 336.
Southwalk Bank v. Commonwealth, 26 Pa. St. 446.
Bank of Pennsylvania v. Commonwealth, 19 id. 156.

No evidence was introduced at the trial regarding the number of stock-yards within the state of Kansas, and it does not appear whether or not there are any other yards within the state, or if there be other yards, whether or not they come

within the provisions of the act in question. If there appears to be but one stock-yards plant, and that is the only one of its class in the state, that fact does not affect the validity of the law. The presumption is that the law is valid, and this presumption should not be overthrown by statements that it is class legislation when those statements do not rest upon matters of which the court can take judicial notice or evidence printed in the record, neither can the legislative journals be introduced to create an ambiguity or doubt in the meaning of the law where none previously existed.

A mere reading of the act should constitute sufficient answer to the objections made. The law is framed upon general terms so as to include all stock-yards in which a certain volume of business is transacted, and will hereafter include other stock-yards in which the business shall grow to the volume indicated. The legislature has, by this act, classified the stock-yards of the state into two classes, and has adopted the most natural and reasonable basis for such purposes that could be used, namely, the volume of business done. The reason for this is obvious; the stock-yards doing a large volume of business are necessarily more of monopolies than those doing a smaller business. The public has greater interest in the business of large stock-yards than it has in the business of smaller ones. The stock-yards of Kansas City furnish the most important feeding-cattle market and one of the largest general markets in the United States. They are the habitual resort of purchasers of cattle, calves, sheep, and hogs. They are situated at the gateway of the commerce of a vast portion of the United States, and as a conse-

quence great numbers of shippers of stock are compelled to use these yards, and the business done there is naturally and properly the subject of legislative control. If there be other yards within the state of Kansas doing a business of such a magnitude and nature as the Kansas City yards, those yards come within the provisions of the law in question. If there be no other yards within the state of Kansas doing such business, then the Kansas City stock-yards are the sole representative of their class in the state. The fact that there is but one plant which is properly the subject of legislative control does not deprive the legislature of the power to exercise its authority with regard thereto.

Another reason why the classification should be based upon the volume of business done is, that rates which are reasonable and proper and furnish a sufficient return upon the capital invested can very properly be made lower and different in a plant where the volume of business is large, while in a smaller plant doing a smaller volume of business higher rates may be necessary in order to afford adequate returns. It would not be proper to base a classification of stock-yards upon the population of the towns where they might be located, as the business done bears but a trifling relation to the population surrounding the yards.

It will thus be seen that the legislature has adopted a classification which is not arbitrary, which is most natural, and which is best intended to answer the purposes intended by the law and less liable to injure those affected thereby. Such being the case, the question of the volume of business to be trans-

acted which should bring stock-yards within the provisions of the law is purely a matter of legislative determination.

Referring to the clause of the fourteenth amendment of the federal constitution, which prohibits states from denying to any citizen the equal protection of the law, this court has said:

"It only requires the same means and methods to be applied impartially to all the constituents of a class, so that the law shall operate equally and uniformly upon all persons in similar circumstances."

Kentucky Railroad Tax Cases, 115 U. S. 321.

"It does not prohibit legislation which is limited either in the objects to which it is directed, or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions, both in the privilege conferred and liabilities imposed."

Hayes v. Missouri, 120 U. S. 68.

"It may be safely said that the rule prescribes no rigid equality, and permits to the discretion and wisdom of the state a wide latitude, as far as interference by this court is concerned. Nor with the impolicy of a law has it concern. Mr. Justice FIELD said, in Mobile v. Kimball, 102 U. S. 704, that 'this court is not a harbor in which can be found a refuge from ill-advised, unequal, and oppressive state legistation.' And he observed in another case: 'It is hardly necessary to say that hardship, impolicy, or injustice of state laws is not necessarily an objection to their constitutional validity.'

"The rule therefore is not a substitute for municipal law. It only prescribes that that law have the attribute of equality of operation, and equality of operation does not mean indiscriminate operation on persons, merely as such, but on persons according to their relations. In some circumstances it may not tax A. more than B.; but, if A. be of a different trade or profession than B., it may. And, in matters not of taxation, if A.

be a different kind of corporation than B., it may subject A. to a different rule of responsibility to servants than B. (Railway Co. v. Mackey, 127 U. S. 205), and to a different measure of damages than B. (Railway Co. v. Beckwith, 129 U. S. 26). And it permits special legislation in all of its varieties. (Railway Co. v. Mackey, 127 U. S. 205; Railway Co. v. Herrick, 127 U. S. 210.)"

Duncan v. Missouri, 152 U. S. 377.

"In other words, the state may distinguish, select, and classify objects of legislation, and necessarily this power must have a wide range of discretion. It is not without limitation, of course. 'Clear and hostile discriminations against particular persons and classes, especially such as are of unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition,' said Mr. Justice BRADLEY, in Bell's Gap Rld. Co. v. Pennsylvania, 134 U. S. 232–240.

"And Mr. Justice BREWER, in Railroad Co. v. Ellis, 165 U. S. 150, after a careful consideration of many cases, said: 'It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the fourteenth amendment, and that in all cases it must appear, not only that a classification has been made, but also that it is one based upon some reasonable ground, some difference which bears a just and proper relation to the attempted classification, and is not a mere arbitrary selection.'"

Magoun v. Ill. Trust and Saving Bank, 170 U. S. 283.

"Classification for such purposes is not invalid because not depending on scientific or marked differences in things or persons or in their relations. It suffices if it is practical, and is not reviewable unless palpably arbitary. The classification of the Missouri statute is certainly not arbitrary. We see many differences between fire insurance and other insurance, both to the insurer and the insured — differences in the elements insured against and the possible relation of the parties to them, producing consequences which may justify, if not demand, different legislative treatment. Of course, it is not for us to debate

the policy of any particular treatment, and the freedom of discretion which we have said the state has is exhibited by analogous, if not exact, examples to the Missouri statute in Railway Co. v. Mackey, 127 U. S. 204, and in Railway Co. v. Beckwith, 129 U. S. 26."

Orient Ins. Co. v. Daggs, 172 U. S. 577.

See also A. T. & S. F. Rld. Co. v. Matthews, 174 id. 96.

Cotting v. Stock Yards Co., 79 Fed. 681.

In the case of N. Y. N. H. & H. Rly. Co. v. People of State of New York, 165 U. S. 628, this court held a law forbidding the use of stoves for heating cars upon railroads more than fifty miles long to be a valid exercise of the power of the legislature to classify the railroads doing business in that state and not an unjust discrimination against railroads more than fifty miles in length.

The case of City of Topeka v. Gillette, 32 Kan. 431, and nearly all of the other state cases referred to in the brief of appellants upon this point, were decided with regard to constitutional provisions forbidding the conferring of corporate power by special act.

In the case of Topeka v. Gillette, the law there under consideration was held void, not because it applied to three cities only, but because the law purported to be applicable to cities of the second class, and then by its terms was limited to those cities of the second class which had a certain number of inhabitants, and to such only of those cities as should take action under the law within ten days after it took effect, and only fifty-eight days were allowed after its passage within which to take any action, after which the law was to be a nullity. The court took judicial notice of the matters and things which show

the application of the law, and determined that, because three cities were singled out of a class of cities ten in number, and then the law was only allowed to act in such a limited mode as to indicate further intention to limit its operation, it must be held to confer special corporate power.

There is no intention to avoid the provisions of the federal constitution shown with regard to this law. It does not appear whether or not the law could in any way operate upon other stock-yards, and the authorities cited are not in point.

The appellants also claim that the legislature intended the act to apply only to stock-yards which had done a certain volume of business prior to its passage. This is not the reading of the statute. It should be read so as to make it refer to any stock-yards which shall hereafter do the prescribed volume of business. Such was the construction placed upon the law by the court below. (Cotting v. Kansas City Stock Yards Co., 79 Fed. 681.) If the statute is subject to two constructions the one should be given it which would tend to make it a valid law, and it must be presumed that the legislature intended it to have such a meaning. This is a fundamental rule of statutory construction, and needs no citation of authorities here.

It is also claimed by the appellants that, if it is contemplated by the law that its provisions shall apply to any other stock-yards in the future, there will necessarily be a discrimination of twelve months during which the defendant company will be deprived of the equal protection of the law. This objection is technical, and not real; the legislature could not well say that a stock-yards company possessing certain area or number of

pens should come within the statutes, and those possessing lesser facilities remain without. The regulation intended was properly measured by the volume of business done, and not the amount of property or the sum invested therein; neither could the classification be based on a single transaction, or the aggregate transactions of a single day. It requires that the business of a considerable period be measured in order to reach a just determination of the question; hence the Kansas legislature said that stock-yards which should do a business for one year which should include an average receipt of not less than 100 head of cattle, or 300 head of hogs, or 300 head of sheep, should be declared to be public stock-yards. It is only after such a volume of business has been done that a company is brought within the terms of the law. The Kansas City Stock Yards Company did a business greater than the amount prescribed by the statute for more than one year before it became subject to the law; so it will be with any future corporation engaged in that business which shall do such volume of business as to bring it within the statutes.

II.

The Act of the Legislature of Kansas of March 3, 1897, Does not Attempt to Control Business Done Outside the State.

A reference to the statute itself should be sufficient answer to this contention. Section 1 provides that stock-yards "within this state" doing a certain volume of business are declared to be public stock-yards. Section 2 provides that any person, company or corporation owning or operating such yard or yards "in this state" is declared to be a public stock-yards operator. Section 4 provides that it shall be unlawful for the owners or employees of such public yards "within this state" to charge more for yardage than the prices therein fixed. Section 5 provides that it shall be unlawful for the owners or employees of stock-yards "in this state" to sell and deliver hay or grain at prices greater than those regulated therein. There is nothing in the act which indicates any intention that it shall operate outside of the state. The law took effect on March 12, 1897. (Laws of Kansas passed at session of 1897, page 450.) The bill of Chas. U. Cotting was filed in this action on March 13, 1897, and a restraining order issued on that day (Record, p. 1–20); consequently no attempt has ever been made to enforce the provisions of this law either within or without the state of Kansas. The question as to the extent to which the law may operate territorily is not involved in these actions. The issue with regard thereto is not framed in

the pleadings and the appellants are in error in claiming that we are urging that the law should have extra-territorial force. The question involved in this proceeding is as to the validity of the law, and the questions regarding the subjects of its operation must be hereafter answered if the law is by this court sustained. The appellants endeavor to show that the circuit court in its final decree attempted to give the law extra-territorial force, which is not the fact. The circuit court, in the exercise of a doubtful power, granted an injunction upon the allowance of an appeal, and made its order broad enough to cover all possible liability of the Stock Yards Company without attempting to define the extent of such liability. If the law is a valid exercise of legislative power, the Stock Yards Company cannot wholly escape its operation by reason of the fact that it is situated on both sides of a line which divides two states.

Under this head the appellants quote evidence with regard to the feeding and watering of cattle at the Kansas City stock-yards, and claim that such feed and water are given the animals for the benefit of the stock shippers or vendors and that such feed and water is immediately sold by them at a high price. We do not so understand the situation. It appears to be the custom to feed and water cattle in the yards; this is a humane and proper custom. Whether it had its origin in the desire of the owner to obtain a greater price for his cattle or in the desire of the Stock Yards Company to sell its feed does not appear, but in view of the fact that the business of feeding is handled in connection with the management and operation of the yards,

and large profits are made therefrom, it would seem highly probable that the Stock Yards Company is responsible for the custom. The buyers who patronize these yards, according to the testimony, purchase the cattle before they are fed, and pay for them upon weights made after feeding. Such appears to be the universal custom. It is evident, therefore, that the buyers make due allowance for this custom and that the seller of cattle must buy feed for them or be cheated in his sale of the cattle; consequently the arrangement is such as to compel the feeding at the stock-yards of both hay and grain under circumstances which permit the company to absolutely dictate the prices and control the profits which it shall realize thereon. It is safe to say, therefore, that the owner of the cattle does not sell the feed and water which the animals receive, and receives no benefit from the purchase of such feed.

The argument that the final decree dismissing the bills, if affirmed, would permit the Stock Yards Company to incur risks of the severe penalties prescribed by the act for hay and grain sold in Missouri and for the yardage of cattle in that state should have no weight. It should not be presumed that any officer of the state of Kansas, in the performance of his duty, would attempt to enforce this or any other statute of the state in any other than a just and reasonable manner; and in determining the extent to which the law covers the transactions of the Kansas City Stock Yards Company, the officer must be supposed to exercise some judgment and some discretion, and not be presumed to desire or intend to needlessly harass or persecute any one.

It is claimed on behalf of the appellants that the act of March 3, 1897, unjustly discriminates against the Stock Yards Company in its regulation of the prices at which feed is to be sold. It is shown by the testimony that the Stock Yards Company purchases its hay and grain in large quantities, and presumably these are bought at wholesale prices and at the time of the year when such prices would ordinarily be the lowest; yet the act permits such feed to be sold for prices not greater than twice the market value thereof at the time of the sale. The market value in the local market of Kansas City is the retail price and not the wholesale price, and as the company is permitted to sell at retail at twice the retail market price, feed which it has bought at wholesale and for a wholesale price, it would seem that a discrimination could not be found in the law.

The testimony and the findings point to the fact that the patrons of the stock-yards are practically compelled to purchase feed of the Stock Yards Company, and while the master has found that on some occasions shippers feed on the cars before the stock reaches the yards, it is evident that such feeding must be an inconvenience, and in the case of shippers from any considerable distance it is practically impossible; consequently only such persons as are exceedingly anxious to save the difference between the value of the feed and the exorbitant prices charged by the Stock Yards Company would go to the trouble and inconvenience of feeding on the cars. Again, it is apparent that the persons who feed before their stock arrives at the stock-yards are at a disadvantage, because of the fact that the

stock is sold and purchased with the expectation and implied understanding that it should be fed and watered just before weighing, as hereinbefore stated.

Harry P. Child, one of the principal witnesses for the complainants, testified that the amount of hay sold at the stock yards in 1896 was about 11,500 tons (Record, 113–115). He also testified that the amount fed the cattle is usually 100 pounds to the car-load of twenty-two to twenty-five head, and to sheep an average of fifty pounds to a car of 120 to 240 head (Record, 367, 368). The amount of hay sold during the year 1896 was twenty-three million pounds. The total number of cattle, calves, horses and mules received at the yards for 1896 was 2,865,671 head; consequently the hay sold at the stock-yards for that year amounted to more than eight pounds for each animal received, exclusive of hogs.

Counsel for the complainants find fault with the act in question because it is not in its terms limited in its operation to the state of Kansas, and reiterate the charge that we claim the law should have its operation in the state of Missouri. They have no right to bring this question of extraterritorial force into this case. It is true that in a brief filed in this case in the circuit court, when it was in the management of other attorneys, representing the former attorney-general, who was then a party to this suit, it was said with much force, and not without reason, that the Kansas City Stock Yards Company, being a creature of the state of Kansas and existing only by virtue of its laws, undoubtedly had the right to do business outside of the

state of Kansas, but if in so doing it violated any of the laws of the state, the state had the right to punish such corporation for that infraction. We now say, as we have before stated, that the question of the extent to which this law shall operate is not in this case, but must be determined hereafter.

III.

The Business Done at the Kansas City Stock Yards is Public in its Nature and is Impressed with a Public Use.

The fact that the business of the Stock Yards Company is impressed with a public use does not seem to be disputed by the appellants, and no question is raised in their brief as to the power of the legislature to declare such yards public yards, or to regulate the prices at which feed may be sold there. Any objection which may be raised upon either of these propositions has been long since set at rest by the decisions of this court, the principal of which are:

Munn v. Illinois, 94 U. S. 113.

Water Works v. Shopler, 110 id. 347.

Budd v. New York, 143 id. 517.

San Diego Land and Town Co. v. City of National City, 19 Sup. Ct. 804.

IV.

The Act of 1897 Permits the Stock Yards Company to Earn a Reasonable Income.

We contend that the main question involved in this case, and the only one which is not "foreclosed by controlling authority, is whether the maximum rates prescribed by the Kansas statute for yardage and feed of live stock are fair and reasonable — the rights of the public considered — or in their nature confiscatory."

In the consideration of this question, it is necessary first to determine from the evidence and the findings of the master the total value of all property owned and used by the company for stock-yards purposes at the time this action was begun.

The appellants have suggested three methods of calculation:

First. By ascertaining, separately, the present value of the physical property, real and personal, owned and used by the company for stock-yards purposes, adding thereto the value of the good-will of the business existing at the stock-yards, basing both of such values upon the cost of reproduction, thus distinguishing the property from naked lands and improvements.

Second. By ascertaining the market value of the capital stock of the company prior to the passage of the statute in question, less the value of any property owned by the company not used for stock-yards purposes, such value of the capital stock measuring the value of the stock-yards plant as an entirety.

Third. By capitalizing the net earnings of the plant at the prevailing rates of interest, deducting therefrom the value of any property which may not fairly be deemed a part of this completed structure and used for stock-yards purposes.

We deny the correctness of each and all of these methods, and contend:

First. That the only value of the property to be considered for any purpose in an inquiry of this kind is that of the tangible, physical property of the company; that the value of the real estate is to be determined by considering it as a body of naked land upon the general market, subject to purchase and sale for all purposes for which a demand may exist—for stock-yards, for railroads, for packing-houses, for manufacturing and mercantile purposes, with all the advantages which may accrue to it in consequence of its location near the corn belt as well as the cattle ranges of the country, in the heart of a great city, surrounded by all the railroads, packing-houses, manufacturing and mercantile plants there existing and in operation, and by reason of the limited area of land in the vicinity available for such purposes.

Second. That in a proceeding of this kind, wherein is to be determined the reasonableness of the rates to be charged by a corporation the amount of whose capital stock issued and outstanding is admitted to be far in excess both of the amount of money actually invested in the concern and of the value of the tangible property, no value of the capital stock above its face or par value can be used or considered in any event for the purposes of such determination.

Third. That the value of the good-will or "live business" is not an element of value to be considered in this case, for the reason that the state of Kansas in nowise seeks to take anything from the appellants or the Stock Yards Company, and that the good-will or "live business" is to be in no manner or degree regulated, disturbed or diminished by the operation of the Kansas statute.

V.

The Amount for which the Capital Stock of the Kansas City Stock Yards Company can be Sold is not of Itself any Adequate Basis for Determining the Value of such Plant.

Counsel for the appellants argue that the market value of the capital stock of the Kansas City Stock Yards Company, or of any such corporation, furnishes sufficient evidence upon which to base an estimate of the value of the property owned by such company, and that it should be allowed to earn sufficient income to pay a reasonable rate upon such value. A mere examination of the situation is sufficient to overthrow this contention. The facts which give the state the right to legislate concerning the rates to be charged at such yards take this corporation out of such rule, if any rule of the kind exists. The Stock Yards Company has a monopoly of the business which is done there. The dealers are compelled to patronize these yards and to pay prices which the company may see fit to charge for its services, in the absence of a statute to the contrary; consequently, the greater the extortion perpetrated at the yards the greater the income from its business, and the greater the market value of its capital stock. The fact that the company has made enormous profits and declared enormous dividends in cash and stock has given the capital stock a market value somewhat above par, notwithstanding the fact that it is capitalized for approximately four times what the property has cost, and notwithstanding the fact that it has

in recent years made improvements and bought property in the state of Missouri which yield but a very moderate return upon the capital invested. It is evident that the market value of this stock has been created because of the fact that the corporation has been able to fix its own prices for services performed and accommodations furnished and to force the collection of these charges. The business of the Kansas City Stock Yards Company is done practically without risk. The stock yarded and fed is of great value. The company does not surrender the possession of the animals until its charges are paid or assured. Being the only market at Kansas City, the only place where buyers assemble, the only place where the commission men and dealers are located, being adjacent to the great packing-houses of the second largest market in the world for the sale of beef-cattle and hogs, and the largest market in the world for the sale of feeding cattle, it has by its business management compelled the yardage of animals intended for market, in these yards, and by the custom of the yards compelled the purchase of feed for these animals. Hence it is natural to expect that doing such a business, having the privilege and power to charge what it pleases therefor, and incurring no risk of loss thereon, the profits of the business have been such as to give the stock a market value much greater than its actual value.

Mr. Harry P. Child, assistant general manager of this institution, testified as follows (Record, p. 177):

"It is an open and notorious fact of information that money in large quantities—of a million dollars and upwards—is con-

tent to accept a very low rate of interest, provided the security is ample; for instance, when a government loan is placed, they have no difficulty in selling the bonds at two or three per cent. The Stock Yards Company, having been in active, live and continuous existence and paying regular dividends of about six per cent. for twenty-five years, and never missing a dividend, is recognized by the commercial world and commercial interests and the capitalist as being as secure as government bonds; and from the fact that it pays about double the interest I assume that they measure the value of the stock at about double the premium they place upon government bonds, that being about the status to-day."

It will be seen that the witness shrewdly refers only to the *cash dividends* paid by the Stock Yards Company, and does not include the *stock dividends* paid by it. He evidences his knowledge of the fact that the basis of the market value of the Kansas City Stock Yards is its ability to pay dividends, and its ability to pay dividends rests upon its power to collect money from the persons patronizing the yards. Hence the absurdity of the contention of appellants, and the apparent righteousness of our claim that the Stock Yards Company should only be entitled to earn and pay a reasonable profit upon the actual value of the property owned and used by it, and this without reference to the market value of watered stock upon which dividends have been paid by reason of exorbitant charges.

Col. Chas. F. Morse and Mr. H. P. Child, the witness just referred to, were the principal witnesses on behalf of the complainants in the court below, they being the general manager and assistant general manager, respectively, of these yards. Both are men of great ability, chosen to manage the great in-

terests of this large company, greatly interested in the outcome of this proceeding, and shrewdly able to place their views of the situation before the court in the light most favorable to the Stock Yards Company.

Mr. Morse testified as follows (Record, p. 324):

"I have tried to explain that the good-will is a part of the value of the property, and the whole property would be decreased in value probably more than one-half if the rates made by the Kansas law were put in force, and I think the good-will would shrink out of sight."

This statement made by the general manager of the company, intended to impress the court with the loss which would accrue to the Stock Yards Company by reason of the enforcement of a law which would allow the company to earn exceedingly large profits upon the cash invested in the business and upon the actual cost of the property used, is an admission that the stock of the Kansas City Stock Yards Company contains an enormous amount of water; that the intangible something which the complainants have presented to the court in various forms, and always in large amounts, as good-will of the business, is a fictitious value, based entirely upon the fact that the company has heretofore been able to charge exorbitant prices for its services. Looking at the situation generally, observing that the company has had a monopoly of the business, and noticing the enormous profits which have accrued to it in the past, it can readily be seen that the values sought to be established by the complainants in this case are wholly fanciful and out of reason.

In support of the contention that the estimate of value

should be based upon the market value of the capital stock, counsel cite the cases of The Adams Express Co. v. Ohio, 165 U. S. 194, and 166 U. S. 185, both of which citations refer to the same case, upon its original hearing and upon a rehearing in this court, in which was involved the constitutionality of a statute of the state of Ohio regarding the taxation of telegraph, express and telephone companies in that state. This statute provided that a board of assessors should

"proceed to ascertain and assess the value of the property of said express, telegraph and telephone companies in Ohio; and in determining the value of the property of said companies in this state, to be taxed within the state and assessed as herein provided, said board shall be guided by the value of said property as determined by the value of the entire capital stock of said companies and such other evidence and rules as will enable said board to arrive at the true value in money of the entire property of said companies within the state of Ohio, in the proportion which the same bears to the entire property of said company, as determined by the value of the capital stock thereof and the other evidence and rules as aforesaid."

The court did not decide the contention involved in that case as to whether or not such valuation was excessive. (165 U. S. 229.) The statute did not require that the assessment should be based upon the value of the capital stock alone, but only required the state board of assessors to ascertain the true value in money of the property and business of the companies within the state of Ohio, and authorized the consideration of the market value of the capital stock as evidence to be taken with other evidence in determining the question; and the opinions furnish no ground for the contention of the complainants herein

that the market value of capital stock determines the actual value of the property owned by the corporation.

It is apparent that the market value of the capital stock of a corporation engaged in a competitive business, in which the earnings are more or less problematical, would naturally be more nearly equal to the value of the property owned by the corporation than in the case of a corporation possessing an absolute power to compel whatever earnings it might see fit to make.

The fact that pending the passage of the law in question the market value of the stock of the Kansas City Stock Yards Company declined seventeen points, as shown by the testimony (Record, p. 78), is additional evidence of the fact that the value of the stock furnishes no adequate measure of the value of the property of the corporation. The value of its property does not fluctuate under the influences of the stock market. It also appears, as is shown by the finding of the master (Record, p. 78), that sufficient of the stock of this corporation has not been sold to justify an estimate of value based upon market quotations.

The fact that the stock of the Kansas City Stock Yards Company has never had a market value greater than $141 per share is conclusive evidence that investors do not believe the actual value of the property owned by the company to be equal to the par value of its stock, or anything near that amount. The shares of a corporation which has paid an average dividend for twenty-five years of 82.95 per cent. upon the cash invested therein, and an average dividend for the same period of 25.53 per cent. upon all outstanding capital stock, and particularly

where, as in this case, the corporation has a certainty that its volume of business will continue, and a certainty of being able to collect its charges without loss — the stock should be worth several times its par value, and would be worth that amount if it were not the judgment of investors that such stock was based very largely upon wind. The market value of railroad and other stocks and securities — matters within the common knowledge of all — furnish comparisons which show a lack of confidence in the stock of the Kansas City Stock Yards Company.

VI.

In Determining Whether or not the Rates Permitted by the Act of 1897 are Reasonable, Reference Must be Had to the Actual Value of the Property Affected Thereby.

"What is the test by which the reasonableness of rates is determined? This is not yet fully settled. Indeed, it is doubtful whether any single rule can be laid down applicable to all cases. If it be said that the rates must be such as to secure to the owners a reasonable per cent. on the money invested, it will be remembered that many things have happened to make the investment far in excess of the actual value of the property—injudicious contracts, poor engineering, unusually high cost of material, rascality on the part of those engaged in the construction or management of the property. These and many other things, as is well known, are factors which have largely entered into the investments with which many railroad properties stand charged. Now, if the public was seeking to take title to the railroad by condemnation, the present value of the property, and not the cost, is that which would have to pay. In like manner, it may be argued that, when the legislature assumes the right to reduce, the rates so reduced cannot be adjudged unreasonable, if, under them, there is earned by the railroad company a fair interest on the actual value of the property. It is not easy to always determine the value of railroad property, and if there is no other testimony in respect thereto than the amount of stock and bonds outstanding, or the construction account, it may be fairly assumed that one or other of these represents it, and computation as to the compensatory quality of rates may be based upon such amounts. In the cases before us, however, there is abundant testimony that the cost of reproducing these roads is less than the amount of the stock and bond account or the cost of construction, and that the pres-

ent value of the property is not accurately represented by either the stocks and bonds or the original construction account. Nevertheless, the amount of money that has gone into the railroad property — the actual investment, as expressed, theoretically, at least, by the amount of stock and bonds — is not to be ignored, even though such sum is far in excess of the present value."

Ames v. U. P. Rly. Co., 64 Fed. 177.

In the same opinion, which was written by Mr. Justice BREWER, on page 179, attention is called to the difficulties which embarrassed the court in that case, and rendered the computation more than ordinarily difficult. These embarrassments arose from the fact that the law therein questioned sought only to reduce the charges upon a certain class of the earnings of the railroads affected thereby, and that it did not attempt to affect the earnings upon interstate freight business or upon passenger traffic. *The opinion clearly shows the determination of the court to consider the question of the reasonableness of the rates prescribed with reference to the income and expenses of the business affected and without regard to the business not affected by the law.* This case presents fewer difficulties than the one referred to. The investment in the property affected by these rates, and the value of such property, can be approximately, if not entirely, segregated from the other property of the company, and an estimate can be made of the return which may be earned upon the property affected. It is argued by appellants that the horse and mule market and the Gould barn return a smaller percentage of income than the other property, and that the charge for yardage and feed should be sufficiently large to enable the company to pay a

reasonable interest upon the sums invested in these properties. It is argued that the horse and mule market is necessary for the general good of the business, but we find no reason why a horse and mule market is a necessary appendage to a stock-yard. It must be observed that the rates in vogue at the horse and mule market are not affected by the law. Horses are kept for a charge of so much per day, regardless of the amount of feed consumed by them, and such feed is not sold by measurement at that market. (Record, p. 66.) Much of the business done at the Gould barn is carried on on the same basis. It is evident that, if the Gould barn and the horse and mule market were making large returns upon the capital invested therein, the appellants would insist with the same earnestness that such portion of the property of the company should be disregarded in determining the question of reasonableness of rates. It must also be noticed that the market and barn just referred to are both situate outside of the state of Kansas, therefore, outside of the jurisdiction of the Kansas legislature and of the courts of the state.

Another case directly in point upon this subject is the case of San Diego Land and Town Company v. City of National City *et al.*, decided May 22, 1899 (19 Sup. Ct. 804), in which was involved the question of the reasonableness of rates prescribed by ordinance of the city of National City for the use or sale of water supplied to that city and its inhabitants. The court held that the water company was entitled only to demand a fair return upon the reasonable value of the property at the time of use, holding, as was held in the Ames case, *supra*,

that the court might take into consideration, as an element of inquiry, the cost of the property and the amount of its bonded indebtedness; and upon the question as to what portion of the investment should be considered in determining the amount that should be earned, the court held that such portion of the water-works plant as was outside of the city, and was not employed in the business regulated, namely, the business of furnishing water to the inhabitants of the city, should not be considered, saying upon this subject:

"One of the points in dispute involves the question whether the losses to the appellant arising from the distribution of water to consumers outside of the city are to be considered in fixing the rates for consumers within the city. In our judgment, the circuit court properly held that the defendant city was not required to adjust rates for water furnished to it and to its inhabitants so as to compensate the plaintiff for any such losses. This is so clear that we deem it unnecessary to do more than to state the conclusion reached by us on this point."

This court has held in various cases, as was stated by Mr. Justice BREWER at some length in the case of U. P. Rly. Co. v. Ames, *supra*, that in determining the question of reasonableness of rates, and the value of property upon which a return is to be earned, the court should take into consideration the amount of capital invested, the amount of bonded indebtedness, the rate of interest which such indebtedness bears, the question as to whether the return allowed would be more than sufficient to pay the first- or second-mortgage bondholders, and other questions of like character. In addition to this, it is held that the rights of the public must also be considered in determining the question as to the reasonableness of rates. It therefore fol-

lows that, if the amount of capital invested in a business can be taken into consideration for the purpose of raising the amount upon which interest is to be paid beyond the actual value of the property involved, the amount of capital invested can also be taken into consideration for the purpose of reducing the sum upon which interest is to be paid below the value of such property, and especially when that value is based upon exorbitant charges leading to exorbitant earnings in the past. The Stock Yards Company has for many years been conducting a business impressed with a public use, and the public has had an interest in that business, although the legislature has not seen fit to exercise any control heretofore. Nevertheless such use has existed and the public has had an interest in the increase of value and growth of the business as well as the Stock Yards Company, and the Stock Yards Company should not be permitted to receive and retain the entire profit arising out of the increase in value of its property and business by reason of adventitious circumstances which it has in only a small way controlled, and in which the public has had an equal interest with the Stock Yards Company.

"It is proper to say that if the answer had not alleged, in substance, that the tolls prescribed by the act of 1890 were wholly inadequate for keeping the road in proper repair and for earning dividends, we could not say that the act was unconstitutional merely because the company (as was alleged, and as the demurrer admitted) could not earn more than four per cent. on its capital stock. It cannot be said that a corporation operating a public highway is entitled as of right, and without reference to the interests of the public, to realize a given per cent. upon its capital stock. When the question arises whether

the legislature has exceeded its constitutional power in prescribing rates to be charged by a corporation controlling a public highway, stockholders are not the only persons whose rights or interests are to be considered. The rights of the public are not to be ignored. It is alleged here that the rates prescribed are unreasonable and unjust to the company and its stockholders. But that involves an inquiry as to what is reasonable and just for the public. If the establishing of new lines of transportation should cause a diminution in the number of those who need to use a turnpike road, and, consequently, a diminution in the tolls collected, that is not, in itself, a sufficient reason why the corporation operating the road should be allowed to maintain rates that would be unjust to those who must or do use its property. The public cannot properly be subjected to unreasonable rates in order simply that stockholders may earn dividends. The legislature has the authority, in every case where its power has not been restrained by contract, to proceed upon the ground that the public may not rightfully be required to submit to unreasonable exactions for the use of a public highway established and maintained under legislative authority. If a corporation cannot maintain such a highway and earn dividends for stockholders, it is a misfortune for it and them which the constitution does not require to be remedied by imposing unjust burdens upon the public. So that the right of the public to use the plaintiff's turnpike upon payment of such tolls as, in view of the nature and value of the service rendered by the company, are reasonable, is an element in the general inquiry whether the rates established by law are unjust and unreasonable. That inquiry also involves other considerations; such, for instance, as the reasonable cost of maintaining the road in good condition for public use, and the amount that may have been really and necessarily invested in the enterprise. In short, each case must depend upon its special facts; and when a court, without assuming itself to prescribe rates, is required to determine whether the rates prescribed by the legislature for a cor-

poration controlling a public highway are, as an entirety, so unjust as to destroy the value of its property for all the purposes for which it was acquired, its duty is to take into consideration the interests both of the public and of the owner of the property, together with all other circumstances that are fairly to be considered in determining whether the legislature has, under the guise of regulating rates, exceeded its constitutional authority, and practically deprived the owner of property without due process of law. What those other circumstances may be it is not necessary now to decide. That can be best done after the parties have made their proofs."

Turnpike R. Co. *et al.* v. Sanford *et al.*, 164 U. S. 578.

"The plaintiffs in error do not contend that it is always or generally unreasonable to restrict the rate for carrying each passenger to three cents a mile. They argue that it is so in this case by reason of the admitted fact that, with the same traffic that their road has now, and charging for transportation at the rate of three cents per mile, the net yearly income will pay less than one and one-half per cent. on the original cost of the road, and only a little more than two per cent. on the amount of its bonded debt. But there is no evidence whatever as to how much money the bonds cost, or as to the amount of the capital stock of the corporation as reorganized, or as to the sum paid for the road by that corporation or its trustees. It certainly cannot be presumed that the price paid at the sale under the decree of foreclosure equaled the original cost of the road, or the amount of outstanding bonded debt. Without any proof of the sum invested by the reorganized corporation or its trustees, the court has no means, if it would under any circumstances have the power, of determining that the rate of three cents a mile fixed by the legislature is unreasonable. Still less does it appear that there has been any such confiscation as amounts to a taking of property without due process of law."

Dow v. Beidelman, 125 U. S. 680.

"*Second.* As to valuation: For purposes of the company, the value of the property, including both railway and lighting plants,

appears to have been placed at $14,250,000, represented by the issue of bonds for $7,250,000, preferred stock $3,500,000, and common stock $3,500,000; but this aggregate was clearly excessive after excluding the electric-lighting department, and on no view can it be taken as the basis for the present consideration. The statements of the actual cost of the constituent street-railway properties, including the cash investment for improvements, are necessarily complicated, from the fact that payments were partly made in stocks and bonds, and the aggregate amount varies according to the ratio of valuation placed upon the bonds alone—in two statements in which the stock is excluded, and in one statement which values both stock and bonds—the minimum being $9,024,107.85, and the maximum $11,313,829.84. The former amount was subsequently modified (page 465, complainant's proof), making the statement of cost $8,885,644.17; and as this excludes any valuation of stock and places the value of the bonds at the discount agreed upon between the parties, which also seems fair, it may justly be taken as representing the true amount invested. But adoption of this purchase amount does not meet the issue, as it is the value of the investment, and not the amount paid, which must control."

Milwaukee Electric Railway and Light Co. v. City of Milwaukee, 87 Fed. 583, 584.

In estimating the value of the tangible property of the company there was no possible plan to be pursued except to ascertain the value of its segregated parts, and thereby the probable cost of its reproduction. Otherwise there was no means of determining the value of the property as a whole. There had been no purchases or sales of like concerns to fix the market value of the plant as an entirety, or to throw any light on the subject of its value as such.

Whilst the appellants contend that it was erroneous and unfair to fix the valuation of the plant by an appraisement of its

segregated and component parts, and that it should have been valued as a unit — a complete and going concern — there was really no substantial difference between the methods adopted by the opposing parties in the introduction of testimony for the purpose of determining the value of the tangible property, in the proceeding before the master.

The appellants sought to show the value of the real estate, apart from the improvements, situated as it was and to be used only for stock-yards purposes, placing the value of the improvements at the cost of their construction.

We sought to show the value of the real estate, apart from the improvements, *upon the general market, subject to purchase and sale for the purposes of stock-yards, railroads, packing-houses, manufacturing, and for all other purposes for which a demand might exist, taking into consideration all of the advantages accruing to it in consequence of its location near the corn belt and near the cattle ranges of the country, in the heart of a great city, surrounded by all the railroads, packing-houses, manufacturing and mercantile plants existing and in operation, and of the limited area of land in the vicinity available for such purposes;* and also placed the value of the improvements at the cost of their construction as shown by the evidence.

All possible value "resulting from the combination of the means by which the Stock Yards Company's business is carried on"—from its connection with railroads, packing-houses, or other concerns — was taken into consideration by the witnesses in fixing their values of the tangible property, it being necessarily included in the value of the real estate and improvements,

and was duly considered by the master in his valuation of the property.

Any value this "combination of means," or these connections with railroads, packing-houses, etc., may possess, aside from that of the physical property by which they are afforded, must result from the use or good-will of such physical property, and is not to be considered in a proceeding of this character.

Although the appellants complain of the methods of valuing the real estate and the improvements of the company separately, it will be seen that they adopted that plan of valuation at the very outset, and pursued it all the way through the proceedings before the master.

D. M. Palmer, one of the principal witnesses for the appellants, testified as follows:

Ques. "Considering this plant as a going concern, as an entirety, as an assembling of various pieces of physical property there, please state to the special master how you would proceed to get at the selling price of such a property as that.

Ans. "I should take first the value of the land down there, as near as I could get at it, and then the value of the improvements, with all of these various facilities that have been furnished; I would consider the receipts, the earning capacity, under those conditions, the location of the property with regard to the supply from which those receipts could be drawn in the future also; all that would go to make up the value I would put upon the property."

All the other witnesses for the appellants proceeded to value the property of the company in the same manner, separating it into parts and parcels at the request of counsel, and stating

—

their opinion as to the value of each; and the same method was pursued by the witnesses for the defendants.

A great deal of testimony on the subject of values was wholly incompetent and utterly worthless, the witnesses having no information upon which to base their judgments, or being permitted to predicate their opinions as experts upon nothing more than mere assumptions, instead of established facts. It will be observed that most of the witnesses for the appellants based their opinions as to the value of the company's real estate as a body of land upon the market price of scattered and isolated lots or small parcels which had been sold, or were held for sale, at so much per front foot, without any knowledge or means of knowing what such property would be worth per acre or in a large tract, such as the main yards of the Stock Yards Company. A few of the witnesses on both sides, however, appeared to have sufficient knowledge concerning the value of real estate in the neighborhood of the stock-yards to render their testimony competent and worthy of consideration; and the witnesses so qualified were found by the master to be "of apparently equal intelligence, fairness, and means of information." So far as it was possible to do so, the master gave credit and effect to the testimony of all of such witnesses, and estimated the value of the real estate accordingly, taking into consideration "*all adventitious advantages accruing to it from its location and environment.*"

Chas. F. Morse, vice-president and general manager of the Stock Yards Company, was appellant's main witness on the subject of values, and he was the only witness who undertook

to testify concerning all and every part of the company's property. He is a large stockholder in the company, and was obviously interested in fixing the value of the company's property at as high a figure as possible. His testimony throughout shows a disposition to put an extraordinary value upon everything tangible or intangible owned or claimed by the company. The record does not disclose that his interest in the result of the controversy was taken into consideration by the master in weighing the testimony, but it is evident that the master would have been warranted in so doing.

On the other hand, the witnesses who testified concerning values on behalf of the defendants were all disinterested parties, and could not have been influenced in any manner or degree by any pecuniary or other interest in the matter in controversy. Five of these witnesses, viz., C. G. Parker, E. F. Allen, R. E. Cable, C. W. Whitehead, and W. S. Beard, were men who had been engaged for years in the real-estate business in Kansas City, Mo., were informed as to the values of lands situated in the neighborhood of the stock-yards, and each of them showed himself to be fairly competent to testify concerning the value of the lands in question. Each of these five witnesses testified as to the value of that part of the main yards situated in Kansas, consisting of 40.659 acres, and the average of the values fixed by them thereon was $20,500 per acre; and the same witnesses, omitting R. E. Cable, testified also concerning the value of the part of the main yards situated in Missouri, consisting of 41.708 acres, and the average of these witnesses thereon was $34,875 per acre. We call attention to the fact

that, in striking the average between this valuation and that of the witness Morse, who fixed the value of the same land at $56,000 per acre, the result is $45,437.50 per acre — substantially that found as the value of the same property by the master. The quarantine yards, consisting of 13.415 acres, were valued by Morse at $12,000 per acre, and the same value was placed thereon by the master.

The north yards, consisting of 14.9 acres, were valued by the master at $23,000 per acre, which was a fair average of the values fixed thereon by the witnesses. It will be seen, therefore, that in the light of all the testimony on the subject, regarding all the *competent* witnesses as possessing "equal intelligence, fairness, and means of information," and considering all the influences and circumstances likely to affect the weight of the testimony and the credibility of the witnesses, the finding of the master as to the value of the real estate used for stock-yards purposes was proper and correct. (Record, p. 77.)

There appears to be no controversy about the value of the structures, buildings and other improvements owned by the company and used for stock-yards purposes, and valued by the master at $1,480,000.

He also found the value of the personal property on hand December 31, 1896, to be $307,377.25, making a total valuation of all tangible property owned by the company and used for stock-yards purposes of $5,388,003.25, which findings may be summarized as follows (Record, p. 77):

Value of real estate,	$3,600,626 00
Structures, buildings, and other improvements,	1,480,000 00
Personal property on hand December 31, 1896,	307,377 25
Total,	$5,388,003 25

In this total value is included the sum of $307,377.25, the value of the personal property on hand December 31, 1896. This property was in nowise used in or necessary to the business of the company during the year 1896, and should not be included in the value of the property used for stock-yards purposes during that year.

It is conceded that the total receipts of the company for the year 1896 were $1,012,271.22, and there should be no controversy about the amount of disbursements properly chargeable to operating expenses for that year. The master found this amount to be $365,712.49, leaving a net income for the year of $646,558.73. The appellants contend, however, that to the sum of $365,712.49, found by the master to have been the total disbursements from the operation of the stock-yards only for the year 1896, should be added the sum of $169,584.65, making the total operating expenses for the year $535,297.14; and they insist that under the terms of a certain written stipulation set forth in the record (p. 82) this sum should be charged to the operating expenses for the year 1896. It is idle to contend that the language of this stipulation should be given any such meaning. So far as it relates to the business of the year 1896 the language is as follows:

"For the purpose of removing any question which may exist in regard to the manner in which the earnings of the Stock

Yards Company were disbursed during the years 1892, 1893, 1894, 1895, and 1896, for operation, maintenance, and extensions of improvements, it is agreed as follows:

. . . . . .

"1896: The gross earnings were $1,023,870.20. From this amount there was expended, in addition to the $368,059.05 shown by the 'profit-and-loss account' for that year, the following amount: $176,394.60. *This amount was disbursed for the following purposes.*"

Then follow the items making up the sum of $169,584.65, *charged by the company to the "construction account" for that year*, and which were expended during the year for the construction of extensions, new buildings, and improvements. These extensions and improvements, as shown by the items in the stipulation, increased the amount and value of the company's property at least to the extent of their cost, and there was no reason why the same should be charged to the *operating expenses* for that year.

For years it had been the practice of the company to charge the expenses of such extensions and improvements to the "construction account." They had not been charged to *profit and loss* nor included in the "operating expenses." The amount so charged to "construction account" had been capitalized from time to time by the issue of stock to take the place of the earnings so invested, and the same course was pursued in 1896, as we shall hereinafter show, in relation to this item of $169,584.65

Mr. Morse testified that

"all of these items have been charged to construction account and the amounts have been from time to time capitalized by the

issue of stock; part of it was sold for cash and some of it was issued to take the place of net earnings invested in that way." Record, pp. 235, 238.

The items which make up this construction account for 1896, as testified by Mr. Morse, "consist of labor in the construction and renewal of sundry buildings, chutes, fences, railroad-tracks, viaducts, drainage, water services, paving in the yards, paving streets, sidewalks, etc., amounting to $181,292.75." In this amount are included the items and sum of $169,584.65 in controversy.

There is nothing in the language of the stipulation nor elsewhere in the record amounting to any agreement or admission that this sum of $169,584.65 should be charged to the "operating expenses" or "profit-and-loss" account for the year 1896. It was charged to the "construction account" and there it should remain, thus leaving the total disbursements from operation of the stock-yards only, for the year 1896, $365,712.49, as found by the master.

It must be borne in mind that repairs to the amount of $32,-309.22 had been charged in the profit-and-loss account (Record, p. 70).

The master was in error in finding No. 33½ that the item of $169,584.65 had not been covered by an issue of stock.

He found that since 1892 the structures and other improvements have been of a more permanent character, and that prior to 1896 stock had been issued upon the value of such inprovements.

The total amounts carried to the construction account on the books of the company for the years 1892 to 1896, both inclusive, was $779,-

957.15 (Record, pp. 82–91, exhibit FF). *The total amount of capital stock which was issued by the company after 1892 based upon earnings carried into construction was $779,640* (Record, pp. 79, 740–744); hence the item of $169,584.65 should not and cannot be considered in making any computation regarding rates of earnings for 1896. Subsequent to 1888 there were no stock dividends on account of increased value of land, and all such dividends made after that year were on account of earnings carried into construction. (Record, pp. 214, 215, 216, table, finding 48, p. 79.)

Under these facts, the net income of the yards for 1896 was $646,587.73—a rate of profit on the value of the real estate, improvements and personal property of the company, as found by the master, of 11.99 per cent.

The master found the value of the real estate and personal property owned by the company but not used for stock-yards purposes to be $1,200,000 (Record, p. 76). There is some contention by the appellants that in this sum there was improperly included the amount of $126,140—the value of certain tracts of land which should have been included in the property used by the company for stock-yards purposes. But an examination of the evidence shows that these two tracts lay entirely outside of the premises used for stock-yards purposes, and that the master properly included their value in the $1,200,000.

These tracts are described by the master as follows (Record, p. 75):

"(*d*) 8.028 acres on the west side of the Kansas river and opposite the main yards in Kansas, appearing on exhibit Z as

D. It was purchased in 1892 at $4,000 per acre, and is now worth about $5,000 per acre, or $41,140.

"(e) 12.122 acres bounded on the north by Central avenue, on the east by Water street and the north yards, on the south by the M. P. yards, and on the west by the Kansas river. This is a part of the tract marked on exhibit Z as E. Its cost was $39,058.55, all of which, except $810.53, was paid by the company in 1884–'5. Its present value is about $85,000."

As we have stated, both of these tracts lay entirely outside of the premises used for stock-yards purposes, and, as shown by the evidence, were both unfit for present use, and could never be used for the purposes of the Stock Yards Company without being filled, leveled, and otherwise improved. It will not be seriously contended by the appellants that the value of these two tracts should have been omitted from that of the property not in use, as found by the master.

Judge FOSTER was mistaken in thinking that these tracts should have been included in the property used by the Stock Yards Company. Colonel Morse, testifying as to one of these tracts, speaks of it as containing about seven acres, and again as containing eight and six-tenths acres, and says that it is unused, and will have to be raised about seven or eight feet to make it available (Record, pp. 192, 193, 246).

The master found that this tract contained 8.028 acres, and was described as follows: "8.028 acres on the west side of the Kansas river and opposite the main yards in Kansas, appearing on exhibit Z as D" (Record, p. 75).

Concerning the other of these two tracts, which was found by the master to contain 12.122 acres, "bounded on the north

by Central avenue, on the east by Water street and the north yards, on the south by the M. P. yards, and on the west by the Kansas river" (Record, p. 75), Colonel Morse testified that the same is largely under water, might be properly termed a sand-bar, has never been enclosed or improved or used for stock-yards purposes, and that none of the grounds "west of Water street" has ever been enclosed or improved (Record, p. 267).

The first of these tracts was valued by the master at $41,140, and the second at $85,000, making the $126,140.

The master found, and it is conceded that the application of the Kansas statute to the business of 1896 would have reduced the gross income $300,651.77, leaving the same for that year $711,619.45.

We now come to a calculation of the rate per cent. of profit for the year 1896, based upon the finding by the master, and as shown by the profit-and-loss account on the books of the company. (Record, pp. 79, 80.)

(1) Total receipts,	$1,012,271 22
Total disbursements,	365,712 49
Net income,	$646,558 73
Applying statutory rates,	300,651 77
Net income,	$345,906 96

Rate per cent. of profit on valuation of $5,388,003.25, as found by the master, 6.42 per cent.

(2) Total receipts,	$1,023,870 20
Total disbursements,	368,059 05
Net income,	$655,811 15
Applying statutory rate,	300,651 77
Net income,	$355,159 38

Rate of profit on total capital stock, $7,368,650, 4.8 per cent. Rate per cent. of profit on value of all property as shown by the books of the company, $6,588,003.25, 5.4 per cent. (Record, p. 80.)

It is claimed by the appellants that, in estimating the value of all of the company's property for the purposes of this case, there should be added to the value of the tangible property that which they call the good-will or "live business" of the company, and on which the appellants' witnesses put a value ranging from a million and a half dollars upward. The value of this so-called good-will was calculated in different ways. For instance, the witnesses Child and Morse claimed that the entire value of the good-will should be measured by the premium on the capital stock; and the witness Morse also contended that it should be measured by the amount of money which the company had actually paid out in building up and developing its business, and the amount so paid he claimed to have been $1,500,000.

We contend, as heretofore stated, that in this proceeding nothing can be added to the value of the tangible property on account of the good-will of the business. It is not the purpose of the Kansas statute to deprive the company of its property or business; and if the company's charges for feed and yardage are reduced to a fair and reasonable point, this so called good-will or "live business" will necessarily in no measure be destroyed or taken away, but should on the contrary, in the very nature of things, be increased. The more reasonable the company's charges the greater would be its volume of business.

The witness Morse fixes the value of the good-will at $2,000,000, claiming that the company has paid out $1,500,000 to secure the good-will, and admits that every dollar so paid out has been charged up in the value of the tangible property and against the state of Kansas in this proceeding. It occurs to us that if this so called good will is a thing of value which has been secured at a cost of $1,500,000, and its value is to be measured by what it cost, and has already been included in the sums invested which go to make up the value of the plant, it should not be included or added a second time. In other words, if the stock-yards company paid $1,500,000 for good-will, it exchanged the money paid for the thing purchased, and did not retain the value of both. Concerning this matter Mr. Morse as follows:

Ques. " . . . Now in your case, you have charged up in favor of the stock-yards and against the people of Kansas in this inquiry every dollar that you have paid out to purchase this good-will, have n't you?

Ans. "Yes, sir.

Q. "Then you go to work and add two millions of dollars to the value of this property for this good-will, the cost of which has already been once charged, do you not?

A. "We have created that value by the payment of that money, and we are entitled to estimate it in our value.

Q. "You have paid out a million and a half of money in the purchase of this good-will, and you have charged it up in favor of the Stock Yards Company, and now you want two million dollars more than that, Colonel?

A. "Well, in any business transaction, as I understand it, if you put one dollar in an enterprise or a property, and it becomes worth three, you are entitled to put that value upon it. That would be my answer. What we have paid for it has realized to us a very considerable profit." (Record, pp. 326, 327.)

. . . . . .

Q. "You spent a million and a half of dollars in putting them there, and thereby you created this good-will. Well, now, you have charged us up with this million and a half of dollars, and it appears on the books, does it not?

A. "Yes, sir.

Q. "There is no difference of opinion between you and me on those points, Colonel, but you have undertaken to designate and specify certain definite sums that you have paid out and which have gone to make up and develop conditions which you are pleased to term good-will.

A. "Yes.

Q. "You say it would cost you two million of dollars to do that, and that the two million of dollars would be the value of the good-will of the business. Now, we say that when you have put in that two millions of dollars — spent it, and charged it up on the books of the company — that that would constitute the value of the good-will.

A. "Yes, sir.

Q. "Where do you get the other two million, then?

A. "I think the difference between us is that you are talking about cost and I am talking about values. I think that is really the difference, because the cost of a thing does not represent its value.

Q. "You say it cost one million and a half to put those things there. Do you mean to add a million and a half more, or that the whole business would be three million and a half?

A. "I mean just what I have stated; that, in addition to the value of the property to which I testified as to land and improvements, that the value of the business or the good-will is two million dollars." (Record, pp. 328, 329.)

The amount of the capital stock issued and outstanding is $7,368,650. Appellants contend that this stock was at a premium ranging from fifteen dollars to forty dollars per share at the time the Kansas statute became effective, March 12, 1897; and they also contend that this premium on the stock

should be taken as a fair measurement of the value of the good-will.

The evidence shows, and the master found, that by the time the Kansas act took effect the stock was practically at par. Concerning this matter Mr. Williams testified as follows (Record, p. 499):

Ques. "Do you know what this stock was worth at any time during this year?

Ans. "I think $135. I do n't know whether it was prior to the introduction of this bill into the legislature or since.

Q. "You do n't know what the stock is worth to-day?

A. "I do n't; it is down.

Q. "You do n't know how much it is down?

A. "No, sir. I think it must have fallen off at least twenty-five or thirty points.

Q. "When did that fall occur?

A. "It has been gradual. You see, all the stockholders did n't find out about the legislation at the same time; they are scattered all over the country, and they did n't find out what had happened.

Q. "The charges that were made by the Stock Yards Company for yardage and feed would have considerable to do with the question as to the market value of the stock, would it not?

A. "Very much, of course, because it affects the earnings directly.

Q. "How much would it affect it?

A. "I do n't know how much the earnings are cut down; if the earnings are cut in two the stock will go below par. . . .

Q. "Do you know the value of this stock now? That is the thing I want to know.

A. "The last I heard in Chicago it was down very near par.

Q. "That was when?

A. "Some two or three weeks ago."

In relation to the same matter Mr. Morse testified as follows (Record, p. 291):

Ques. "When these stock dividends are made the stock is issued to the stockholders at par?

Ans. "Yes, sir.

Q. "They do not pay any premium?

A. "No, sir.

Q. "When the stock is sold on the market it brings a premium, does it not?

A. "In some cases it does, but generally it has been sold at par, but there were a few sales at a premium.

Q. "The quotations on the stock market are given at from $1.15–$1.18 to $1.20, are they not, for the stock?

A. "Yes, sir, that is about it; there has been very little that has been sold on the market; it has been sold for what it would bring whenever it has been sold.

Q. "From fifteen to eighteen per cent. premium?

A. "Yes; I don't know what it is just now.

Q. "It has been above par for a great many years, has it not?

A. "Yes, sir.

Q. "About how many years.

A. "For a great many years there were no quotations whatever because it was an unknown stock; it was unknown on the market; but I would say that for the last fifteen years it has commanded a premium on the market.

Q. "Ranging about how high?

A. "I think it has been up as high as $1.40, and has run down as low as $1.10; there has never been very much of it on the market; if there had ever been any large block of the stock on the market it would probably have sold for very little above par; the occasional sales of a few shares are all that have been bid for."

The same witnesses testified further (Record, p. 324):

Ques. "You think that your good-will would be affected if you were to put in the rate specified in the law, which would satisfy the shippers better than the rates which are now in operation; you think your good-will would be hurt by that, do you?

Ans. "I have tried to explain that the good-will is a part of the value of the property, and the whole property would be decreased in value probably more than one-half if the rates made by the Kansas law were put in force, and I think the good-will would shrink out of sight."

In view of this testimony, there can be no question about the correctness of the master's finding that the stock had probably fallen to its par value before the act in question became effective. The last sale of which there is any account was made in February, 1897, while the legislature was in session, at $115 per share. If the stock was at a premium of thirty-two per cent. in January, there must have been a drop of seventeen points between the two dates, and it is altogether likely that the decline continued more rapidly down to the passage of the act, when the stock was at a point substantially at par.

It is very apparent that where the capital stock of a corporation equals or, as in this case, exceeds the value of the property owned by the corporation, and such corporation is permitted to earn sufficient moneys to keep such stock at par on the general market, the earnings must be considered as fair and reasonable, and the stockholders can have no right to complain that they are deprived of their property without due process of law; and from this we deduce two propositions:

First. If the value of the stock is to be regarded as the

measurement of the value of the property of the Stock Yards Company for the purposes of this case *no value of the stock above* par can be considered.

Second. Unless it can be shown that the adopting of the maximum rates prescribed by the Kansas statute will cause the value of the capital stock of the Stock Yards Company to decline to a point below the actual value of the property owned by it such maximum rates must be considered as fair and reasonable.

Where the stock equals or exceeds the investment the fact that the stock will sell at par indicates conclusively that investors believe it capable of earning a fair and reasonable value upon the investment. If investors will purchase such stock at a price above par, it necessarily means that the stock at par will yield more than a fair and reasonable return upon the investment.

It therefore follows that, if in the consideration of this case the so-called good-will is an element to be taken into account in estimating the value of the plant as a unit, the value of such good-will cannot in any event exceed the difference between the value of the tangible property and the par value of the stock. This difference was found by the master to be $780,000 (Record, p. 78).

An effort was made to show by the testimony of "expert" witnesses that the value of the so-called good-will was upwards of two million dollars. These witnesses claimed to have no personal knowledge whatever of the value of the tangible property

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aside from that already possessed by the master, and the question put to each of them was substantially:

"State what, in your opinion, is the value of the plant, considered as a unit, assuming that the value of the tangible property is from five to seven million dollars?"

It is evident that an answer based upon such an hypothesis can be nothing more than guesswork. Absolute knowledge of the value of the tangible property alone could afford no means or method by which to estimate the value of the good-will. Business prospects, rates to be charged for services, yardage, and feed, earning capacity, net income and still other things must of necessity be taken into account in answering intelligently such a question. And since in the judgment of each of these witnesses the so-called good-will was measured by the premium on the stock, and that in turn depended upon the net earnings, and they upon the further fact that the company was permitted to fix its own charges unrestricted by the legislature, such opinions as to the value of the good-will were of no consequence and entitled to no consideration.

In relation to this matter, Judge THAYER said:

"It is fair to infer that a large amount of stock has been issued by the company, not so much with reference to the actual value of the physical property as with reference to the income which it could be made to produce and the dividends which it could be made to pay. That this latter consideration has been a potent factor in producing the present volume of stock is a necessary inference from all the testimony. For these reasons the capital stock cannot be taken as truly representing the value of the corporate property in a proceeding where the inquiry as to its value is made for the purpose of

ascertaining whether certain rates prescribed by the legislature for yarding and feeding cattle are reasonable or unreasonable. The fact that the state possesses the power to prescribe a maximum charge for such services necessarily prevents the court from giving as much weight to the possible income-producing capacity of the property in controversy as it might give if the Stock Yards Company was vested with the right to charge as much for such services as it thought proper. *Neither can the opinion of certain experts as to the value of such property be regarded as reliable, much less as conclusive, because such opinions are doubtless based to a considerable extent on the income which the property can be made to yield and upon the assumption that the owner has the right to determine what price he will charge for the use of his property.*"

There was no possible way under the evidence to estimate the value of the so-called good-will upon the cost of reproduction, for the reason that the estimates of the witnesses testifying on that subject were wholly conjectural. The evidence showed clearly that by far the greater part of the sum which had been expended by the company in building up and developing its business had increased the value of the real estate and was taken into consideration by the appellants' witnesses in fixing their values thereon.

Thus the tangible property of the company was again given the benefit, to that extent, of a double valuation. But since the value of all property, tangible and intangible, owned and used by the company for stock-yards purposes has been ascertained by the master in a proper manner, so far as it was possible to do so under the evidence, it only remains to be determined whether upon that valuation the enforcement of the Kansas

statute would reduce the rate of net income to an unfair and unreasonable figure, the interests of the public considered.

By formulating numerous tables, which are set forth in their brief, appellants have attempted to show that the statutory rates, applied to the business of 1896, would have reduced the net receipts to an unreasonable degree.

We take the trouble to call attention to two of these tables, which appear at page 49 and again at page 128 of appellants' brief. The grounds on which the calculations and figures in the other tables are based are so far assumed and so unwarranted by the evidence as to require no comment.

The first of the two tables in question starts out with the assumption that the total amount of operating expenses for the year 1896 was $535,297.14 or 52.51 per cent. of the total receipts for that year, and assumes further that the "written stipulation," about which appellants have so much to say, amounted to an absolute agreement between counsel that the sum last mentioned was in fact properly chargeable to the operating expenses for the year 1896. With these assumptions involved in the calculations, the table then proceeds to show the cost of operation and maintenance and net income from the sale of feed at the yards in 1896, including the horse and mule department and the Gould barn.

The second of these tables purports to set forth the same sort of a calculation, applying the statute to the business of the year, and is as follows:

Table No. 2.

	Gross income.	Cost of operation and maintenance the same as in table No. 1.	Net income.
Amount received for feed served to cattle, calves, hogs, and sheep (less cost of feed).....	$74,258 34	$78,992 13	—$4,733 79 (Deficit.)
Amount received for feed in horse and mule department (less cost of feed).....	27,385 59	14,380 17	13,005 42
Amount received for feed in Gould barn (less cost of feed).....	6,104 27	5,343 71	706 56
Totals.....	$107,748 20	$98,716 01	$9,032 19

It will be observed that the first column is intended to exhibit the gross income from three sources, under the application of the statute in question. As shown in the first table, the gross income from the sale of feed served to cattle, hogs, calves and sheep was $150,432.54. The master found that the statute applied to the gross receipts for 1896 would have reduced them $300,651.77, a per cent. of reduction of 29.7. This per cent. of reduction applied to the $150,432.54, the gross receipts from feed served to cattle, hogs, calves, and sheep, would leave the gross income from that source, under the statute, $105,754.08. Applying to this the rate per cent. of operation and cost of maintenance assumed and set forth in the first table, the result is a net income of $26,761.25, instead of a deficit of $4733.39, as computed by appellants. *The sum of $74,258.34, claimed as the gross income under the statute, in table No. 2, is in fact the cost of hay and grain consumed by cattle, calves, hogs and sheep during the year, as found by the master* (Record, p. 74).

The second item in table No. 2, under gross income, $27,385.59, is in fact the gross income from hay and grain consumed in the horse and mule department for the year, as found by the master (Record, p. 74); whereas, in order to show the result of the application of the statute to that item of income, this sum of $27,385.59 should have been reduced 29.7 per cent., leaving $19,252.07. Applying to this the above-assumed rate of operating expenses, the result is a net income of $4871.09.

The third item under "Gross income," in table No. 2, is in fact the cost of the hay and grain consumed in the Gould barn, as found by the master (Record, p. 74), instead of the gross income from that source reduced 29.7 per cent., which leaves $7154.12. Applying to this the above-assumed rate of operating expenses, the result is a net income of $1810.41, making the net income from the three sources, under the application of the statute, $33,444.26, instead of $9032.19. For the purpose of showing correctly the result of applying the statute to the gross income from the three sources mentioned in these tables, assuming that the relation of the gross operating expenses to the gross receipts was 52.51 per cent., we submit the following table:

	Gross income.	Rate per cent. of operation and cost of maintenance (assuming total operating expenses to have been $337,643.70), 52.51 per cent.	Net income.
Amount received for feed served to cattle, calves, hogs, and sheep (less cost of feed).....	$105,754 08	$78,992 13	$26,761 95
Amount received for feed in horse and mule department (less cost of feed).....	19,252 07	14,380 17	4,871 90
Amount received for feed in Gould barn (less cost of feed).....	7,154 12	5,343 71	1,810 41
Totals.....	$132,160 27	$98,716 01	$33,444 26

As a matter of fact the rate per cent. of operation and cost of maintenance for 1896 was 36.12 per cent. This is the relation which the operating expenses, to wit, $365,712.49, bear to the gross income, $1,012,271.22, which is practically the same percentage as was testified by Colonel Morse (Record, p. 199).

We apprehend that none of these tables will be found of any value to the court in determining the percentage of profit earned upon the branches of business involved therein, but if they are to be considered we submit the following as being a correct exposition of the theory advanced by appellants. Applying the statute to the three sources of income in question, which causes a reduction of 29.7 per cent., and applying the rate per cent. of operation and cost of maintenance, which, as we have seen, is 36.12 per cent., the following table is a correct exhibit of the business to which these tables relate:

	Gross income.	Rate per cent. of operation and cost of maintenance, 36.12 per cent.	Net income.
Amount received for feed served to cattle, calves, hogs, and sheep (less cost of feed).....	$105,754 08	$54,336 23	$51,417 85
Amount received for feed in horse and mule department (less cost of feed).....	19,252 07	9,891 67	9,360 40
Amount received for feed in Gould barn (less cost of feed).....	7,154 12	2,584 06	4,570 06
Totals.....	$132,160 27	$66,811 96	$65,348 31

We have urged that the disputed item of $169,584.65 was properly charged to the construction account, and that this is particularly true in the light of the fact which the master seems to have overlooked, namely, that stock was issued as a dividend to the stockholders to cover the same as an addition of that amount to the value of the property. It would seem as if nothing more need be said upon this subject; but if the matter is to be further considered, we invite the attention of the court to the following items, which ought not, under any circumstances, to be charged to operation or maintenance (Record, p. 90):

Charged by the master and on company's books to construction account		$169,584 65
For completion of the new Missouri addition to the exchange building begun in 1895, including $386.08 for a new vault in the Kansas part of the building.....	$24,854 35	
For completing power plant begun in 1895,	5,950 56	
On hay and grain barns, for moving one barn, enlarging it, and fitting it up, $600, and the rest for the erection of three new barns where there had been none before	3,676 95	

Chutes and fences in new yards in new Missouri extension	$24,892 56	
New sheep sheds built in the north yards on the site of former cattle pens	12,541 71	
Viaducts (expended for an extension in the main yards of viaducts built in 1894)	6,809 80	
Water-supply (for pipes, hydrants, etc., to carry water to pens and new hog and sheep sheds in the north yards, necessitated in place of former water pipes by rearrangement of the sheds)	3,926 40	
Office furniture, new	1,052 44	
		$114,375 57
		$55,209 08

The appellants have apparently urged from the beginning of this case that, in fixing a basis of value upon which they should be permitted to earn income, an intangible something which they call "good-will" should be added to the value of the property. No case has been found by the appellants or by ourselves in which the question of good-will has been considered as forming a basis for prospective profits. We apprehend that there is little of merit in the appellants' contention upon this subject, and the testimony in regard thereto is of slight value, if any. The witnesses for the appellants, who came from other cities, and who were asked to place a value upon the stock-yards property based upon the market value of its real estate and improvements, testified upon a subject concerning which they could furnish no additional light to the court. They were unable and did not attempt to give the market value of any of the property of the Stock Yards Company. They possessed no more information regarding the amount of business done at the stock-yards than had the court, and in all probability their knowledge

of the subject was much less. No possible reason existed why they should have been permitted to testify. Their testimony consisted of conclusions based upon facts already in the possession of the court, and involved no questions of special experience which would make them experts in regard to such value. The fact that they were called and placed upon the stand shows the straits to which appellants have been driven in securing testimony to bolster up and enlarge the value of the property of the Stock Yards Company.

As we have elsewhere stated, the public has an interest in the growth of business at the yards similar to that of the Stock Yards Company. Simply from the fortuitous fact that these yards were located in the early history of this market has arisen the great volume of business done there. Kansas City is the only large market within the great corn belt of the United States, and is at the point where all the railroads of the West and Southwest have centered. The business of handling stock had to be centered at Kansas City, and would have come there regardless of the efforts of the Stock Yards Company; which being the fact, the public has just as much interest in the value of the market as the Stock Yards Company. The stock-yards business at this city is a natural monopoly, and if the Kansas City stock-yards were to-day wiped out of existence another market-place would soon be found where all the business would be done, and as much business would center there as is now centered at these yards. The donations which have been made to secure the location of packing-houses have been given, not for the purpose of securing the building of such institutions at

Kansas City, but for the purpose of locating them adjacent to the stock-yards, and to prevent other companies from engaging in competitive business of that character. The Stock Yards Company having secured these advantages, and having thereby secured a monopoly of the business, should not be heard to contend that the monopoly has given them a right to tax the people doing business there, so that it may pay interest upon the value of the power which it possesses.

The merchant who buys the good-will of a business in which he is about to engage will not for a moment claim that such good-will, or the volume of trade which results therefrom, should enable him to charge greater prices for his goods than he would otherwise charge; on the contrary, having secured the good-will of the business, he will naturally sell goods cheaper because such good-will enables him to do a larger business. So it should be with the stock-yards. Having control of a business the volume of which is now enormous, they should be able to furnish cheaper facilities rather than dearer ones, and the fact that they have a monopoly of the business should be an argument in favor of lower rates rather than in favor of higher ones. The prices paid by the owners for yardage and feeding of animals seem small; but when we recall the fact that shipments are usually large and the dealers bring to the stock-yards several hundred animals in each shipment, and those animals are driven into a pen where they stay for a few hours and are then driven a short distance across scales where they are weighed and delivered to purchasers, the charge of twenty-five dollars per hundred head for such service is an enormous

one; especially when we recall the fact that a single pen may in one day receive and discharge several shipments of cattle at the undeviating rate of twenty-five dollars per hundred head.

It must also be borne in mind that during much of the time in which the Stock Yards Company has been making such enormous profits the yardage rates for cattle were twenty cents per head instead of twenty-five cents, and that in 1891 the company unnecessarily, arbitrarily and wrongfully raised its rates. (Record, pp. 129–151.)

The question of the reasonableness of the rates prescribed by the statute should be considered solely with reference to the income and expenditures of the business affected and of the business necessarily and properly incidental thereto. As the horse and mule market is outside of the state of Kansas and is independent of and separate from the Kansas business, being managed by an individual who conducts the business done there, and the Stock Yards Company receives fifty per cent. of the profits of such business in compensation for the use of its plant, the cost of this property should be deducted from the value of the stock-yards property and not taken into consideration under this branch of the case, and the income therefrom should be deducted from the net income of the Stock Yards Company.

It is apparent that each of the witnesses who testified as to the value of the stock-yards property on behalf of the appellants had a greater or less interest in placing the value of such property at a high figure, either because of a direct and personal interest in the management and affairs of the company,

or because such witness was the owner of real estate in the vicinity of the stock-yards. While, on the other hand, none of the witnesses called on behalf of the attorney-general had any interest in the outcome of this action, and their knowledge of values was based upon actual experience and acquaintance with the sale of property in that vicinity. It is highly probable, indeed, that these witnesses placed their values too high, as their estimates were based upon knowledge of the sales of individual town lots, which sold at so much per front foot, and in testifying they have estimated acre property at the same rates as sales were made for small tracts. No serious objection can be found or made to the estimate of real-estate values determined by the master; at least no objection can be made that those estimates are too low, as they are substantially an average of what all of the qualified witnesses testified to regarding such values.

We insist, therefore, that a fair estimate of the values of the real estate used by the Stock Yards Company cannot be greater than the amounts found by the master. The cost and value of such he determined to be as follows:

	Cost.	*Value.*
Main yards in Missouri.....	$1,691,619 59	$1,876,860 00
Main yards in Kansas.....	230,110 81	1,219,770 00
North yards.....	40,594 72	161,496 00
Quarantine yards.....	102,659 44	342,500 00
Totals.....	$2,064,594 56	$3,600,626 00

Record, pp. 64–77.

We urge that the following statement of the stock-yards business done for 1896, and the estimate of what it would have paid

under the rates prescribed by the act of 1897, is absolutely fair to the Stock Yards Company:

Value of real estate owned and used by the company		$3,600,626 00
Structures, buildings, and improvements		1,480,000 00
Personal property on hand December 31, 1896		307,377 25
		$5,388,003 25
Deduct horse and mule market		430,420 00
		$3,957,583 25
Gross income of Stock Yards Company, 1896		$1,023,870 20
Deduct amounts received from rents, outside property	$6,007 45	
Deduct amounts received from interest and dividends	5,591 53	
Deduct expenditures of operation	365,712 49	377,311 47
		$646,558 73
Deduct net income of horse and mule market		3,790 75
		$642,767 98

This is equivalent to 13.71 per cent. upon a value of $3,957,583.25.

Applying the statutory rates to the business of 1896, and deducting $300,651.77 from the net income mentioned above, leaves $342,116.21 as the net profit upon the business which is subject to the law, or 8.65 per cent. upon $3,957,583.25.

Applying the statutory rates, $342,116.21, the net earnings upon the stock-yards proper, is equivalent to six per cent. upon $5,701,933.50.

Value of stock-yards proper, capitalized on six-per-cent. basis	$5,701,933 50
Value of horse and mule market	430,420 00
Value of property not used for stock-yard purposes	1,200,000 00
Total value of property owned by company	$7,334,353 50

Estimating the value of the stock-yards property which is affected by the law of 1897 at such a sum that the net profits thereon would equal six per cent., or $5,701,933.50, gives such property a value $1,744,350.25 greater than the value of the actual tangible property subject to the operation of the law; and this sum is most certainly sufficiently large to cover any possible estimate which would include "good-will," "going concern," or any other value sought to be attributed to this property by the appellants.

We think the appellants do not seriously contend that any change should be made in the figures first above given, except that they claim that the business of the horse and mule market should be included in the computation, and that to the value of the property owned by the Stock Yards Company should be added an estimate for good-will. The appellants refer repeatedly to the testimony upon which the master's findings are based, and contend that he has only estimated the values of parcels of the property, and that he did not take into consideration the value of the entire property as a "going concern." An examination of the record shows that such was not the fact. All the witnesses who testified regarding the value of the real estate testified as to the value of separate parcels and tracts. The property was necessarily divided into the four parcels referred to by the master; as, the main yards in Missouri, main yards in Kansas, north yards, and quarantine yards. The master took into consideration, as has been stated, all the circumstances surrounding the location and situation of the property in question. The witnesses who testified for the appellants as to the value of the

lands in question did not refer to the value of the premises as a going concern, further than that some of them attempted to place an estimate upon what they considered or called good-will, which is merely an estimate upon the value of the business done. Any testimony as to the value of good-will or as to the value of a going concern which is based upon a given value of the real estate and personal property and a statement of the income and expenses of the Stock Yards Company is of no value in any court. When the witnesses had testified as to the market value of the real estate employed in its business, the value of the improvements placed thereon, the amounts of the receipts and expenditures of the Stock Yards Company, there was no room for any further or other testimony upon this subject, because the court was then in possession of all the facts necessary to enable it to render a decision.

The business of 1896 was apparently taken by both parties and the court below as a basis for the determination of this question. This seems very proper in view of the fact that the business of the company is a steady one and not liable to fluctuation. It must be evident to the court that, with the growth and development of the southwestern portion of the United States, particularly western Kansas, Colorado, New Mexico, Arizona, Oklahoma, Indian territory, and Texas, the cattle business done at these yards must increase year by year, and that these yards are destined to become the greatest of their kind in the United States.

We do not ask that the Kansas City Stock Yards Company be permitted to earn only a reasonable percentage of profit

upon the money which has been actually invested in its business or upon the actual cost of its property. We recognize the fact that this property has greatly increased in value since the organization of the stock-yards, and we are willing that the company be permitted to earn a reasonable interest upon the value of its property; but in determining this question as to the reasonableness of rates, we ask the court to consider the table of figures showing the dividends paid, set forth in the statement of facts above, and determine whether or not a reduction of $300,651.77 for the business of 1896 would have been an unjust and unreasonable exercise of legislative power. It will be seen from this table that in 1896 dividends were declared to the amount of $862,610, equal to 12.44 per cent. upon the entire capital stock of the company. If the statutory rates had been in force then the amount of this dividend would have been reduced to $561,958.23, equal to 8.1 per cent. of the outstanding capital. In the face of these figures, it seems to us absurd that the complainants can urge that the reduction provided by the statute of 1897 will not permit a reasonable return to the stockholders of that company.

VII.

The Acts of Congress and the Regulations of the Department of Agriculture of the United States upon the Subject of Quarantine do not Deprive the State of Kansas of the Power to Regulate the Charges for Feeding and Yardage.

The acts of congress and the regulations referred to under the ninth point of appellants' brief do not attempt to fix charges for the performance of any service by the stock-yards, and do not attempt in any manner to regulate the stock-yards. They are not under the management or control of the federal government, which has merely prescribed rules and regulations to be observed in the conduct of that business. It does not appear that the law here in question affects the right of the government to enforce its rules and regulations in any manner, and until this is made to appear the courts will not enjoin the operation of the law on account of such statutes and regulations. The arguments urged on this point will, if carried out, lead to the conclusion that anything which is the subject of congressional action or control cannot be the subject-matter of state legislation. The only effect which the action of congress and the rules of the department of agriculture have upon the business of the Kansas City Stock Yards Company is to compel the performance of additional services and the incurring of additional expense. The additional expense of a compliance with the statutes and regulations referred to must, of course, be taken into consideration in determining the question of the reasonableness

of rates to be charged, as it involves the Stock Yards Company in an expenditure of money for permanent fixtures, and requires additional labor and expense in the handling of its business, all of which has been included in the figures given regarding the cost of the plant and the expenses of operating the same. The law in question is less of an interference with interstate commerce, when regarded with reference to the quarantine statutes and regulations, than was the one involved in the case of Missouri, Kansas & Texas Rld. Co. v. Haber, 169 U. S. 613, in which it was held that a statute of the state of Kansas imposing liability upon a railroad company transporting cattle liable to impart infectious diseases was not a violation or an interference with the federal statutes and regulations or with any of the interstate-commerce laws or powers of the United States; and the cases referred to in that opinion have a bearing upon this case as indicating the extent to which, along certain lines, the legislature of the state may act in prescribing rules and regulations governing the importation of cattle from other states without trespassing upon the powers of congress over that subject. Upon the general question as to whether or not the act of March 3, 1897, interferes with the rights of congress under the interstate-commerce clause of the constitution, to which this portion of the appellants' brief is subordinate, we shall refer in another subdivision.

VIII.

The Interstate-commerce Provisions of the Federal Constitution and the United States Statutes upon that Subject do not Prevent the State of Kansas from Regulating Charges at the Kansas City Stock-yards.

In the first place, it does not appear in the record, so far as we have observed, that any of the stock fed, watered or cared for at the Kansas City stock-yards were unloaded and fed on account of or in pursuance of the act of congress of March 3, 1873, being sections 4386–4390 of the Revised Statutes, and which relates to the feeding and watering of animals conveyed from one state to another, and prohibits the confinement of such animals for a greater period than twenty-eight consecutive hours.

Stress is laid upon finding No. 30 of the master, to the effect that in 1896 about 100,000 head of live stock were unloaded at the Kansas City stock-yards, cared for, and again shipped therefrom, under the claim that the transactions at the stock-yards were mere incidents of interstate shipments of such live stock; but finding No. 30 should be construed in connection with finding No. 32, from which it appears, as well as from the evidence, that it is customary to ship cattle to Kansas City on through bills of lading, naming some other point of destination, with the privilege that the cattle may be unloaded and detained for a time at Kansas City, and also with the privilege that cattle so shipped may be sold there, and that, under this privilege granted

by the railroad company, cattle so shipped, unloaded and placed in pens are usually sold, but that approximately 100,000 head of those so unloaded at Kansas City did not find a market there which was satisfactory to the owners, and these animals were reshipped. It is evident that after the animals are unloaded at the stock-yards they are subject to the control of the owners or their agents. It is common knowledge that stock is usually shipped to market in the charge of one or more individuals who accompany them, and presumably the owners of stock so unloaded are present directing where it shall be placed in the stock-yards, giving directions with regard to the feeding, and endeavoring to dispose of the stock so unloaded. The fact that when such animals are reshipped the expenses for yardage are paid by the railroad company indicates nothing more than the existence of a custom. The fact remains that the cattle are unloaded for the purpose of being sold, whether they are reshipped or not; and that being the case, what takes place while they are unloaded has no connection with or relation to the shipments of the animals or any question of interstate commerce. The attention of the court is called to the fact that the number of animals so reshipped during the year 1896 was less than one fifty-fourth of the number received at the yards. If by any possibility it could be determined that as to this, or any other branch of the business, the interstate-commerce powers of the federal government forbid the state from regulating the charges of the Stock Yards Company, this branch could be relieved from the operation of the law without affecting its validity.

It is difficult to see how it can be claimed that an act of the legislature of the state of Kansas designed to prevent the imposition of exorbitant charges for the yardage and feeding of animals in stock-yards can be held void because of any interference with the interstate-commerce law of the federal government.

Counsel for the appellants have exercised great diligence and ingenuity in discovering and citing authorities which they claim support the contention, and, indeed, it would be strange if out of the mass of decisions rendered by this court upon questions of interstate commerce something could not be found to support almost any theory advanced.

If it be determined that the business done at the Kansas City stock-yards constitutes interstate commerce, still it does not follow that the state has no power to pass such a law as the one in question. It has been repeatedly held by this court that the power of congress over interstate commerce in all its branches and ramifications is not exclusive, but that upon many subjects the state may act where congress has not seen fit to do so; such is the case in regard to quarantine charges, and upon the subject of the regulation of wharfage charges the same ruling has been made. The latter subject is clearly akin to that of stock-yards. It has, we believe, been uniformly held that the state has the power to regulate the charges which shall be made for the use of wharves, for loading and unloading vessels, whether engaged in interstate commerce or not. It would seem that such wharves are necessary instruments for the completion of a shipment, and to that extent there is greater reason why

states should not control them than there is why they should not control stock-yards. At the stock-yards the shipment is ended in the ordinary course of affairs, the animals have been delivered to the Stock Yards Company, which holds them as the agent of the owner, and the service of the carrier has been performed and completed. The duties regarding the transportation are ended while at the wharf; the duty of the carrier is not ended until the goods are delivered; consequently the question of wharfage is more nearly akin to the question of carriage than is that of yardage; yet this court has stated repeatedly that the question of the reasonableness of charges for wharfage is one of local interest, and unless congress has seen fit to take some action with regard thereto the states may clearly do so.

Transportation Co. v. Parkersburg, 107 U. S. 691.
Ouachita Packet Co. v. Aiken, 121 id. 444.
Packet Co. v. St. Louis, 100 id. 428.
Vicksburg v. Tobin, 100 id. 430.
Packet Co. v. Keokuk, 95 id. 80.
Canon v. New Orleans, 20 Wall. 577.

In like manner many other subjects of state legislation trench upon subjects of interstate commerce, and yet are held to be legitimate subjects for legislation. A license tax of $500 upon express companies doing business extending beyond the limits of a state, where the taxes upon companies doing business within the state was only $100, was held to be valid.

Osborne v. Mobile, 16 Wall. 479.

In Turner v. Maryland, 107 U. S. 38, the charge of a fee for the inspection of tobacco to be shipped out of the state was held legal.

In Huse v. Glover, 119 U. S. 543, the charge of tolls by the state upon locks placed in public waters was held not to be an interference with interstate commerce.

A state tax levied upon gross receipts of a railroad company which was engaged in both intrastate and interstate business is valid.

P. & R. Co. v. Pennsylvania, 15 Wall. 284.

In the case of Hopkins *et al.* v. United States, 171 U. S. 578, this court has practically decided that the business done at the Kansas City stock-yards does not constitute interstate commerce. It was there held that the business of the Kansas City Live Stock Exchange done at the stock-yards at Kansas City was not an incident to or so far related to interstate commerce as to bring it within the provisions of the act of congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies." The business of the Kansas City Live Stock Exchange, or rather that of its members, is closely identified with the business done by the Stock Yards Company. The members of the live-stock exchange occupy offices at the stock-yards; frequently attend to the driving and locating of stock in the yards when received; make the sales and direct the watering and the delivery. Hence, is it not possible that the business of the Kansas City stock-yards should be considered as interstate commerce to such an extent that the state has no power to legislate with regard thereto; while, on the other hand, the business of the live-stock exchange is so far removed from interstate commerce that congress has no power to act with reference thereto. In the opinion in the

case just referred to is found a general discussion of the subject as to what constitutes interstate commerce that is particularly applicable to the facts in this case. Reference is made to the wharfage cases above referred to, and others involving the same principles; and referring to the question with regard to the refusal of the Stock Yards Company to permit any one but members of the live-stock exchange to sell cattle at the yards, and to arbitrarily fix charges for such service by the exchange, the court says:

"But whether the charges are or are not exorbitant is a question primarily of local law, at least in the absence of any superior or paramount law providing for reasonable charges. (107 U. S. 691.) This case does not involve that question.

"If charges of the nature described do not amount to a regulation of interstate trade or commerce because they touch it only in an indirect and remote way, or else because they are in the nature of compensation for the use of property or privileges as a mere facility for that commerce, it would for a like reason seem clear that agreements relating to the amounts of such charges among those who furnish the privileges or facilities are not in restraint of that kind of trade. While the indirect effect of the agreements may be to enhance the expense to those engaged in the business, yet, as the agreements are in regard to compensation for privileges accorded for services rendered as a facility to commerce or trade, they are not illegal as a restraint thereon.

"The facilities or privileges offered by the defendants are apparent and valuable. The cattle-owner has the use of a place for his cattle furnished by the defendants, and all the facilities arising from a market where the sales and purchases are conducted under the auspices of the association of which the defendants are members, and in a manner the least troublesome to the owners, and at the same time the most expeditious and effective. Each of these defendants has the right to have the

cattle which are consigned to him taken to the cattle-yards, where, by virtue of the arrangements made by defendants with the owners of the yards, the cattle are placed in pens, watered and fed, if necessary, and a sale effected at the earliest moment. It is these facilities and services which are paid for by a commission on the sales effected by the commission men. If, as is claimed, the commission men sometimes own the cattle they sell, then the rules do not apply, for they relate to charges made for selling cattle upon commission, and not at all to sales of cattle by their owners.

"Definitions as to what constitutes interstate commerce are not easily given so that they shall clearly define the full meaning of the term. We know from the cases decided in this court that it is a term of very large significance. It comprehends, as it is said, intercourse for the purposes of trade in any and all its forms, including transportation, purchase, sale and exchange of commodities between the citizens of different states, and the power to regulate it embraces all the instruments by which such commerce may be conducted. Welton v. Missouri, 91 U. S 275; Mobile County v. Kimball, 102 U. S. 691; Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196; Hooper v. California, 155 U. S. 648, 653; United States v. E. C. Knight Co., 156 U. S. 1.

"But in all cases which have come to this court there is not one which has denied the distinction between a regulation which directly affects and embarrasses interstate trade or commerce, and one which is nothing more than a charge for a local facility provided for the transaction of such commerce. On the contrary, the cases already cited show the existence of the distinction and the validity of a charge for the use of the facility."

See also Anderson v. United States, 171 U. S. 604.

The case of Munn v. The People of Illinois, 94 id. 113, is very closely in point. The facts of this case are too familiar to this court to need a review here, and we only desire to call the attention of the court to the similitude between the business

regulated and the business of the Kansas City Stock Yards Company. We know of no sufficient reason for distinguishing between the cases. In the opinion the court said:

"For this purpose we accept as true the statements of fact contained in the elaborate brief of one of the counsel of the plaintiff in error. From these it appears that, 'The great producing region of the West and Northwest sends its grain by water and rail to Chicago, where the greater part of it is shipped by vessel for transportation to the seaboard by the Great Lakes, and some of it is forwarded by railway to the Eastern ports. . . . Vessels, to some extent, are loaded in the Chicago harbor and sailed through the St. Lawrence directly to Europe. . . . The quantity (of grain) received in Chicago has made it the greatest grain market in the world. This business has created a demand for means by which the immense quantity of grain can be handled or stored, and these have been found in grain warehouses, which are commonly called *elevators*, because the grain is *elevated* from the boat or car, by machinery operated by steam, into the bins prepared for its reception, and *elevated* from the bins by a like process into the vessel or car which is to carry it on. . . . In this way the largest traffic between the citizens of the country north and west of Chicago, and the citizens of the country lying on the Atlantic coast north of Washington is in grain which passes through the elevators of Chicago. In this way the trade in grain is carried on by the inhabitants of seven or eight of the great states of the West with four or five of the states lying on the seashore, and forms the largest part of the interstate commerce of these states. The grain warehouses or elevators in Chicago are immense structures, holding from 300,000 to 1,000,000 bushels at one time, according to size. They are divided into bins of large capacity and great strength. . . . They are located with the river harbor on one side and the railway-tracks on the other; and the grain is run through them from car to vessel, or boat to car, as may be demanded in the course of business. It has been found impossible

to preserve each owner's grain separate, and this has given rise to a system of inspection and grading, by which the grain of different owners is mixed, and receipts issued for the number of bushels, which are negotiable, and redeemable in like kind, upon demand. This mode of conducting the business was inaugurated more than twenty years ago, and has grown to immense proportions. The railways have found it impracticable to own such elevators, and public policy forbids the transaction of such business by the carrier; the ownership has, therefore, been by private individuals, who have embarked their capital and devoted their industry to such business as a private pursuit.' In this connection it must also be borne in mind that, although in 1874 there were in Chicago fourteen warehouses adapted to this particular business, and owned by about thirty persons, nine business firms control them, and that the prices charged and received for storage were such 'as have been from year to year agreed upon and established by the different elevators or warehouses in the city of Chicago, and which rates have been annually published in one or more newspapers printed in said city, in the month of January in each year, as the established rates for the year then next ensuing such publication.' Thus it is apparent that all the elevating facilities through which these vast productions 'of seven or eight great states of the West' must pass on the way 'to four or five of the states on the seashore' *may* be a 'virtual' monopoly.

"Under such circumstances, it is difficult to see why, if the common carrier, or the miller, or the ferryman, or the innkeeper, or the wharfinger, or the baker, or the cartman, or the hackney coachman, pursues a public employment and exercises 'a sort of public office' these plaintiffs in error do not. They stand, to use again the language of their counsel, in a very 'gateway of commerce,' and take toll from all who pass. Their business most certainly 'tends to a common charge, and is become a thing of public interest and use.' Every bushel of grain for its passage 'pays a toll, which is a common charge,' and, therefore, according to Lord Hale, every such warehouseman 'ought to be

under public regulation, viz.: that he . . . take but reasonable toll.' Certainly, if any business can be clothed 'with a public interest and cease to be *juris privati* only,' this has been.

. . . . . .

"It was very properly said in the case of the State Tax on Railway Gross Receipts, 15 Wall. 293, that 'it is not everything that affects commerce that amounts to a regulation of it within the meaning of the constitution.' The warehouses of these plaintiffs in error are situated and their business carried on exclusively within the limits of the state of Illinois. They are used as instruments by those engaged in state as well as those engaged in interstate commerce, but they are no more necessarily a part of commerce itself than the dray or the cart by which, but for them, grain would be transferred from one railroad station to another. Incidentally they may become connected with interstate commerce, but not necessarily so. Their regulation is a thing of domestic concern and, certainly, until congress acts in reference to their interstate relations, the state may exercise all the powers of government over them, even though in so doing it may indirectly operate upon commerce outside its immediate jurisdiction. We do not say that a case may not arise in which it will be found that a state, under the form of regulating its own affairs has encroached upon the exclusive domain of congress in respect to interstate commerce, but we do say that, upon the facts as they are represented to us in this record, that has not been done."

The cases of Budd v. State of New York, 143 U. S. 517, and Brass v. North Dakota, 153 U. S. 191, are also in point, as in both of these statutes regulating and limiting the charges of public elevators for receiving, storing and handling grain were upheld. Each of these public elevators was as much the instrument of interstate commerce, and the business done by and through it was as clearly connected with interstate commerce, as the business of the Kansas City stock-yards; yet, not-

withstanding this, statutes regulating their uses were sustained. No good reason exists for discriminating between those cases and the case at bar. The question whether the cattle yarded, fed and sold at the stock-yards were shipped from the state of Kansas or from some other state is immaterial; the transportation is ended when they reach the stock-yards. The cattle are merely held for the purpose of sale; a further transportation of them means a new proceeding taken in pursuance of new intentions regarding their disposition.

Neither does the fact that the animals are sometimes driven from one state to another in the disposition of the business of the stock-yards affect this case. The Stock Yards Company should not be permitted by reason of its location upon the state line to avoid the laws of either state, and cannot, by merely driving cattle across an imaginary line and driving them back again, say that by reason thereof the state has been deprived of its power to enforce its law. The driving of animals from place to place is merely an incident to the business done in the yards, and is not incidental to any question of regulation of commerce.

Coe v. Errol, 116 U. S. 517.
Chicago etc. Rld. Co. v. Becker, 32 Fed. 849.
Kentucky etc. Bridge Co. v. Louisville Rld. Co., 37 id. 567.

IX.

This Action Cannot be Maintained Because it is a Suit against the State of Kansas, and Because the Only Relief Sought Herein is to Enjoin the Prosecution of Criminal Actions Which Would Have to be Brought in the Name of the State of Kansas.

Chapter 240 of the Laws of Kansas passed at the session of 1897, after prescribing what shall be deemed to be public stock-yards, prescribes the rate which shall be charged for feed and yardage at such yards. These matters occupy all of sections 1 to 5, inclusive, of the act. Section 6 permits the owners of dead stock to sell the same as they may please. Section 7 is the only section of the act which prescribes any penalty for violation of the law, and reads as follows:

"SEC. 7. That any person or persons violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined for the first offense not more than $100; for the second offense not less than $100 nor more than $200; and for the third offense not less than $200 nor more than $500 and by imprisonment in the county jail not exceeding six months for each offense; and for each subsequent offense he or they shall be fined in any sum not less than $1000 and by imprisonment in the county jail not less than six months."

Section 8 prescribes the duties of the attorney-general of the state of Kansas under this law, and reads as follows:

"SEC. 8. It is hereby made the duty of the attorney-general to prosecute all violations of the provisions of this act."

It will be seen that no duty rests upon the attorney-general to secure to the patrons of the yards the rates mentioned in the act. The only duty which imposed upon him is to commence and prosecute criminal actions against persons violating any of the provisions of the act.

"A criminal action is one prosecuted by the state as a party against a person charged with a public offense for the punishment thereof." (Code of Procedure of Kansas, § 3.)

The attorney-general, in the answers filed in the court below, made the objection that these actions could not be prosecuted because in violation of the eleventh amendment to the constitution of the United States. (Record, pp. 902, 933.)

This case differs from the case of Smyth v. Ames, 169 U. S. 466. In that case the suits were brought against the state board of transportation, composed of the attorney-general, secretary of state, auditor of public accounts, state treasurer, and commissioner of public lands and buildings, which board was charged by the law in question with the enforcement of the rates prescribed by that act. Such we understand to be substantially the provisions of all the laws which have been called into question in this court in similar cases in which this court has held that it has power to enjoin the actions of state officers.

In the case of Pennoyer v. McConnaughy 140 U. S. 1, the action was brought against the board of land commissioners of California to enjoin them from selling land which the complainants claimed to own. If the land belonged to the state it was the statutory duty of the defendant to make the sale. This

court held that an action to enjoin the defendant from selling the complainant's land was not an action against the state. In the case of *In re* Tyler, 149 U. S. 164, this court held that a proceeding in contempt against a state officer who had seized property not subject to levy under tax-warrants is in no sense a suit against the state. In the case of Scott v. Donald, 165 U. S. 68, this court held that a suit for damages against state officers who under color of an unconstitutional statute have seized and carried away liquors belonging to the plaintiff was not a suit against the state. In the case of Tindal v. Wesley, 167 U. S. 204, it was held that a suit against state officers to recover possession of real property which they claimed to hold for the state was not a suit against the state. The cases last mentioned are cited as authority for the decision in the case of Smyth v. Ames, *supra*, but we submit that they furnish no justification for the prosecution of the case at bar; neither does the decision in the Smyth-Ames case uphold the right to prosecute this action, but it rather comes within the decision of this court in the case of Fitts, Attorney-General, *et al.*, v. McGhee *et al.*, 172 U. S. 516, in which it was held that the federal court has no jurisdiction over an action of this nature brought merely for the purpose of testing the validity of a statutory enactment, where the only duties resting upon the defendant consist of obligations to commence criminal prosecutions. We take the liberty to copy at some length from the opinion of the court in this case, as follows:

"There is a wide difference between a suit against individuals, holding official positions under a state, to prevent them,

under the sanction of an unconstitutional statute, from committing by some positive act a wrong or tresspass, and a suit against officers of a state merely to test the constitutionality of a state statute, in the enforcement of which those officers will act only by formal judicial proceedings in the courts of the state. In the present case, as we have said, neither of the state officers named held any special relation to the particular statute alleged to be unconstitutional. They were not expressly directed to see to its enforcement. If, because they were law officers of the state, a case could be made for the purpose of testing the constitutionality of the statute, by an injunction suit brought against them, then the constitutionality of every act passed by the legislature could be tested by a suit against the governor and the attorney-general, based upon the theory that the former, as the executive of the state, was, in a general sense, charged with the execution of all its laws, and the latter, as attorney-general, might represent the state in litigation involving the enforcement of its statutes. That would be a very convenient way for obtaining a speedy judicial determination of questions of constitutional law which may be raised by individuals, but it is a mode which cannot be applied to the states of the union consistently with the fundamental principle that they cannot, without their assent, be brought into any court at the suit of private persons. If their officers commit acts of trespass or wrong to the citizens, they may be individually proceeded against for such trespasses or wrongs. Under the view we take of the question, the citizen is not without effective remedy, when proceeded against under a legislative enactment void for repugnancy to the supreme law of the land; for, whatever the form of proceeding against him, he can make his defense upon the ground that the statute is unconstitutional and void. And that question can be ultimately brought to this court for final determination.

"What has been said has reference to that part of the final decree which holds the act of February 9, 1895, to be invalid and inoperative. Whether the owners of the bridge and the

plaintiffs as their representatives were denied by the statute fair and reasonable compensation for the use of the property by the public, was a question that could not be considered in this case. That is not a matter to be determined in a suit against the state, for of such a suit the circuit court could not take cognizance.

"It remains only to consider the case so far as the final decree assumes to enjoin the officers of the state from instituting or prosecuting any indictment or criminal proceedings having for their object the enforcement of the statute of 1895. We are of opinion that the circuit court of the United States sitting in equity was without jurisdiction to enjoin the institution or prosecution of these criminal proceedings commenced in the state court. This view is sustained by *In re* Sawyer, 124 U. S. 200, 209, 210. It was there said: 'Under the constitution and laws of the United States, the distinction between common law and equity, as existing in England at the time of the separation of the two countries, has been maintained, although both jurisdictions are vested in the same courts. (Fenn v. Holme, 21 How. 481, 484–487; Thompson v. Railroad Co., 6 Wall. 134; Heine v. Commissioners, 19 id. 655.)' Again: 'The office and jurisdiction of a court of equity, unless enlarged by express statute, are limited to the protection of rights of property. It has no jurisdiction over the prosecution, the punishment or the pardon of crimes and misdemeanors, or over the appointment and removal of public officers. To assume such a jurisdiction, or to sustain a bill in equity to restrain or relieve against proceedings for the punishment of offenses, or for the removal of public officers, is to invade the domain of the courts of common law, or of the executive and administrative departments of the government.' At the present term of the court, in Harkrader v. Wadley, 172 U. S. 148, 169, 170, we said: 'In proceeding by indictment to enforce a criminal statute, the state can only act by officers or attorneys, and to enjoin the latter is to enjoin the state.' Again: 'Much more are we of opinion that a circuit court of the United States,

sitting in equity in the administration of civil remedies, has no jurisdiction to stay by injunction proceedings pending in state court in the name of a state to enforce the criminal laws of such state.' Undoubtedly the courts of the United States have the power, under existing legislation, by writ of *habeas corpus*, to discharge from custody any person held by state authorities under criminal proceedings instituted under state enactments, if such enactments are void for repugnancy to the constitution, laws or treaties of the United States. But, even in such case, we have held that this power will not be exercised, in the first instance, except in extraordinary cases, and the party will be left to make his defense in the state court. (*Ex parte* Royall, 117 U. S. 241; New York v. Eno, 155 U. S. 89; Whitten v. Tomlinson, 160 U. S. 231; Baker v. Grice, 169 U. S. 284.) But the existence of the power in the courts of the United States to discharge upon *habeas corpus* by no means implies that they may, in the exercise of their equity powers, interrupt or enjoin proceedings of a criminal character in a state court.''

It would seem that nothing more need be said in this case, and we therefore desire to submit that the appeal should be dismissed or the case remanded with directions to dismiss in the court below. Respectfully submitted.

A. A. GODARD, *Attorney-General.*

B. H. TRACY, *Assistant Attorney-General.*

OCTOBER 25, 1899.

No. 43. 1463
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Clerk
Supl. Br. of Godard & Tracy for Appellees.

Supreme Court of the United States.

OCTOBER TERM, 1899.

Filed Nov. 13, 1899.

No. 43.

CHARLES U. COTTING AND FRANCIS LEE HIGGINSON, APPELLANTS,

vs.

A. A. GODARD, AS ATTORNEY GENERAL OF THE STATE OF KANSAS, AND THE KANSAS CITY STOCK YARDS COMPANY ET AL., APPELLEES.

Supplemental Brief on Behalf of Attorney General.

A. A. GODARD,
Attorney General.

B. H. TRACY,
Assistant Attorney General.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 11-11-'99

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Supplemental Brief on Behalf of Attorney General.

In order that it may not be overlooked, we desire to call the attention of the court to the fact that immediately after the present attorney general entered upon the duties of his office, Hon. L. C. Boyle, who had just retired from that position, filed in this court and cause a motion to abate, upon grounds which amount substantially to the objection that the suit should be dismissed because of the fact that the term of office of the attorney general named as a defendant in the bills filed herein had ex-

pired. The motion, with proof of service and an argument in support thereof, were printed and filed in this court on January 14, 1899. A brief in opposition thereto was filed. Subsequently a motion was presented by the appellants to this court to revive the case in the name of the present attorney general. The motion to revive was allowed without prejudice to the motion to abate, which was passed, and should be considered by this court on the final determination of this case.

We desire to submit that the motion to abate should be allowed, and present the argument contained in the brief heretofore filed upon that subject as our argument thereon.

THIS IS A SUIT AGAINST THE STATE OF KANSAS.

In answer to the argument contained in the reply brief filed by the appellants, and in addition to what we have previously said upon this subject, we desire to add the following:

It is urged that this point has been waived because not presented by plea before the issues were joined. There is no force in this objection. The question was called to the attention of the court before any testimony was taken, as appears from the opinion of Judge Foster, already cited. The testimony was all taken in this case before the issues were joined and upon the application for a temporary injunction. Before any expense of taking testimony had been incurred the court had held that the suit was not one against the State, and if a plea had then been filed, it would have been a useless formality. The rights of appellants have not been prejudiced in any way. We apprehend also that, as

the complainants' bills show upon their face that the suits ought not to be maintained, this court will not order an injunction based thereon.

In the Smyth-Ames case the question as to whether that was an action against the State of Nebraska was raised for the first time in this court, and yet the question was considered and decided (169 U. S.; see p. 518).

In this connection we desire to call the attention of the court to the nature of the relief sought against the attorney general, and for that purpose quote the allegations of the bill of Charles U. Cotting upon this subject:

"That by said section 8 of said so-called act referred to herein as 'Exhibit A' it is made the duty of the said Louis C. Boyle as attorney general of the State of Kansas to prosecute all of the violations of the provisions of said act; that your orator fears that the said attorney general may cause the defendant corporation and any and all of its officers and agents who shall violate any of its provisions to be arrested and prosecuted; that he will attempt to enforce said so-called act through the courts of Wyandotte county, Kansas, and through the courts of the State of Kansas, by a multiplicity of criminal actions or proceedings against each and every person failing or refusing to comply with the provisions thereof, including the said defendant corporation and its officers and agents, thereby greatly harassing and annoying the said defendant corporation and its officers and agents and causing them great expense and consuming valuable time, unless the said defendant corporation, its officers and agents shall put in force at once the said charges and prices specified in said sections 4 and 5 of said so-called act, and shall obey and carry out all of the terms and provisions of the said act and each section thereof; and your orator fears that the said Louis C. Boyle, as attorney general, will proceed at once to carry into force said arrests and prosecu-

tions unless immediately restrained by the order and injunction of this honorable court."

Record, p. 12.

The prayer of the bill is of like tenor. It prays that the said Louis C. Boyle may be restrained from prosecuting the officers and agents of the stock yards company by arrest and otherwise.

Record, pp. 16, 17.

The bill of Francis Lee Higginson is in the same language and terms (Record, pp. 33, 37, 38).

The allegations of the bills and the contention of the appellants are that the injunctions should be allowed in order that a multiplicity of criminal suits may be avoided. This is not within the province of a court of equity; an injunction may in some cases be granted to restrain the prosecution of civil actions, but not to restrain the institution of criminal proceedings.

Harkrader *vs.* Wadley, 172 U. S., 148.

Neither does the fact that many criminal suits are threatened instead of one or few change the rule.

"That the defendants may be frequently indicted constitutes no reason why a Federal court of equity should assume to interfere with the ordinary course of criminal procedure in a State court."

Fitts *vs.* McGhee, 172 U. S., 516.

In the reply brief of the appellants it is assumed that it is the duty of the attorney general to enforce the law in question. An argument is made which is based upon the

fallacy that it is his duty to see that shippers secure the rates provided by the statute. Such is not the fact. The law prescribes that any persons violating its provisions shall be guilty of a misdemeanor. It also makes provision that the attorney general shall prosecute offenders thereunder.

It is the duty of the county attorneys of the State to prosecute violations of the criminal laws in the lower courts. The attorney general must appear in such cases in the appellate courts. The only additional duty imposed upon him is that of appearing in the lower courts. He cannot incite or institute proceedings unless complaint is made to him that the law is being violated. The bill alleges that the attorney general was intending to prosecute the officers and agents of the stock yards company, and an injunction was asked to restrain him from so doing. The attorney general could not verify a complaint unless he had knowledge of the facts upon which it was based. Naturally and necessarily he would have no personal knowledge of the facts upon which to commence proceedings; hence he could institute no proceedings without a complaining witness, and such witness might and probably would lay his case before the local county attorney rather than go to the remote capital of the State to seek the attorney general. The situation therefore presents this phase. This proceeding is brought to restrain the attorney general from acting when he cannot act except in pursuance of steps to be taken by others, and it is exceedingly doubtful if these steps would ever be taken or he be given the opportunity to act, and the only step which he could take after complaint had been made to him would be to commence a criminal action in the name of the State of Kansas in one of the courts of that State.

It should be borne in mind that the allegations of the bills are to the effect that the stock yards company through fear of the attorney general were intending to put into effect the rates prescribed by the law, and the primary object of the action is to enjoin that company from so doing. Supposedly the attorney general is only incidentally brought into the action, yet the contest is made by that officer alone. The stock yards company and its officers who are also made defendants file no answers in the case; on the contrary, they furnish the complainants with nearly all the testimony introduced in their behalf. The officers of the company show such a bias and prejudice in the case as to leave no room to doubt but that they are with the complainant in the case. The entire proceeding shows that it is a suit between the stock yards company on one side and the attorney general on the other. When the final adjudication was reached the appellants were allowed to appeal only on condition that the stock yards company should give a bond.

This bond to secure the repayment of overcharges was required, not of the appellants, but from one of the parties supposed to have been successful in the case, and the bond was immediately produced.

Record, pp. 947, 948, 961.

The conclusion which necessarily follows from the foregoing is that this action is brought for the purpose of testing the validity of an enactment of the Kansas legislature, and not for any other purpose, thus bringing it within the decision of this court in Fitts *vs.* McGhee, *supra.*

We desire to add that the granting of an injunction in this case would be a violation of section 720 of the Revised

Statutes of the United States, the language of which is as follows:

SECTION 720. "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

To enjoin the attorney general from proceeding in court against violators of law is equivalent to enjoining the actions of the courts themselves. Where a party is enjoined from prosecuting his case the effect is the same as if the court were enjoined from acting thereon.

Rensselaer & S. R. Co. *vs.* Bennington & R. R. Co., 18 Fed., 617.

In re Sawyer, 124 U. S., 200.

REASONABLENESS OF RATES.

The effort of appellants to claim that a different rule should be applied to the stock yards company in determining the question of reasonableness of rates from that applied to railroad, turnpike, and other companies should avail them nothing.

In the first place, the reasons for the rule adopted by this court are erroneously stated by the appellants. The right to regulate the business of stock yards exists because of the fact that it is impressed with a public use. The power to regulate the charges of railway, turnpike, and other corporations exists for the same identical reason, and none other. The reason why the courts have refused to interfere with legislation regulating railway rates unless it clearly

appears that such rates are confiscatory is not connected with the subject-matter of the regulation, but arises solely from the rule that legislation will not be held unconstitutional and void unless it clearly appears to be so. Every presumption is in favor of the validity of an enactment of the legislature. Granted that the legislature has the power to regulate, and it necessarily follows that such regulation will not be disturbed unless the power has been clearly abused.

The presentation of facts in this case by the appellants has been made in both briefs filed by them, and doubtless will be made upon the oral argument, with great ability, rare skill, and adroit touches of color, making their side of the case appear in its most favorable aspect. To properly answer such an argument is, indeed, a great task. We must ask the court to give all possible consideration to the record, and before going into the details of the case take a general view of the situation.

The Kansas farmer who fattens a few cars of cattle for the market subsists in the meantime quite largely upon the proceeds of corn sold at from ten to twenty-five cents per bushel, and hay sold at from three to five dollars per ton. When at last his cattle are ready he ships them a great distance and at high cost to Kansas City. There is but one market there, hence he must patronize it. He is not allowed to sell his cattle, but must employ a commissionman to do so. For a single car of twenty animals he must pay the commission dealer ten dollars. The animals are driven into a pen, where they stay a few hours and five dollars more is charged, besides which he is compelled to purchase feed at approximately ten times the price for which his own hay

and grain have been sold. When he has paid the railroad, commission, and stock-yard charges there is little left to represent the labor and capital invested in the animals.

The profits made by the stock yards company have been enormous. The appellants talk about the risk that has been incurred in the business. There has been no risk, unless it were when the business first started, and then it paid 14.47 per cent. the first year. (See table in our first brief, p. 6.) Since then it has been safe and profitable beyond the dreams of conservatism and avarice.

The profits shown in the past make the contention of the appellants seem most absurd. The figures given in the reply brief exaggerate the effect of the law. Still, taking the business of 1896 as a basis, the gross income was $1,023,870.20 (Record, p. 70). A reduction of $300,651.77 would equal 29 per cent.

Deducting from the gross income the expenses of operation and income from business and property not affected by the law, the percentage of reduction is much less than the figures mentioned in appellants' reply brief:

Gross income, 1896		$1,023,870 20
Expenditures of operation (Record, p. 70)	$365,712 49	
Received rents, outside property	6,007 45	
Received interest and dividends	5,591 53	
Income of horse and mule market	3,790 75	
		381,102 22
Net income from business affected		$642,767 98

The percentage which a reduction of $300,651.77 would make upon this sum is 46, which is the percentage of reduction upon the net income instead of 63, as claimed in the reply brief. The company declared dividends to the amount of 12.44 per cent. in 1896. A reduction of the entire net income to the amount of 46 per cent. would still have permitted dividends to the amount of 6.72 per cent.

A reduction of the net income of the company to the amount of 46 per cent. since its organization would have permitted the earning of enormous profits—several times as much as could in any light be considered as reasonable compensation for the value of the property employed.

In the reply brief just filed is reiterated at length the claim that the item of $169,584.65 charged by the company to construction in 1896 should have been charged to operation and maintenance. The company had already charged for maintenance of the yards the sum of $32,309.22 expended for repairs (Record, p. 70), making a total of $201,893.87 which the appellants claim to be the cost of repairs for a single year.

The total value of the improvements made upon the real estate used by the company was $1,480,000 (Record, p. 77). These consisted for the greater part of brick and frame buildings well built, pens constructed of heavy timber and very largely floored with vitrified brick, steel and stone bridges, and tunnels constructed with heavy masonry. Whether the cost of grading and filling the lands is included in this estimate or not we are now unable to say, but it is quite likely that such is the fact. These matters taken into consideration with the stipulation which shows the nature of the items, it seems to us, settle the question that

the company originally charged these items where they properly belonged.

We desire to make a more explicit statement of the reasons which compel us to believe that the item of $169,584.65 was covered by a stock dividend. The finding of the master is that it was after 1892 that the construction account was capitalized (Record, p. 71).

The amounts carried to construction on the books of the company were as follows:

1892	$85,076 58	(Record, p. 82.)
1893	87,149 70	(Record, p. 83.)
1894	252,751 87	(Record, p. 85.)
1895	178,584 40	(Record, p. 87.)
1896	176,394 60	(Record, p. 89.)
Total	$779,951 15	

It will be observed that the amount carried to the construction account for 1896, $176,394.60, includes the disputed item of $169,584.65, which is the amount remaining of the sum charged to construction account after deducting the sums received from sales of property (Record, p. 91).

The stock dividends declared to stockholders after 1891 were as follows (Record, pp. 79, 740–744):

1894	$268,100
1896	433,450
February 1, 1897	78,090
Total	$779,640

Amounts charged to construction account, 1892 to 1896, both years inclusive.....	$779,951 15
Amount of stock issued to cover same.....	779,640 00
Balance not capitalized.....	$317 15

In their reply brief appellants still urge that the construction account of 1896 was not capitalized, but if not, why was stock to that amount issued and distributed to stockholders? There had been no increase in the value of real property in 1896. No reason is given why the stock was issued, and we have only the bare statement of Mr. Morse that the account was not covered.

We have not claimed, nor do we claim, that the company should issue additional stock for any purpose. What its mode of conducting its private and internal affairs shall be in the future is immaterial, so long as its rates are reasonable and its service proper.

The contention that the company has reached its maximum of business is also erroneous. We urge that a reduction of rates will, in a measure, increase its business, and that the cattle business of the country tributary to Kansas City has greatly increased since the taking of evidence in this case and will probably still further increase is a matter of common knowledge, of which this court can take judicial notice.

With regard to the question as to what is a reasonable rate of interest for the stock-yards property to earn, we said but little in our former brief, taking it for granted that the court was already fully advised upon the subject. Appellants' counsel have in their reply brief reiterated state-

ments outside the record that are so manifestly unfair and unjust that we are constrained to reply. A list of old municipal bonds issued years since in the newer portions of the State, and therefore bearing high rates of interest, is selected from the list of those outstanding for the purpose of indicating the current rate which such bonds bear. They say "the most conservative investments in the State, such as municipal bonds, bear from seven to ten per cent."

Reply Brief, p. 34.

The average rate per cent. of all the county bonds issued in the State of Kansas for the first nine months of 1899 was 4.48 per cent. These usually sold above par. Choice county and city bonds issued in the State have repeatedly sold on a 3½ per cent. basis. No bonds are issued, even by school districts, bearing more than 5 per cent. interest. Money is being loaned on Kansas farms at 5 per cent. per annum. Business men in Kansas City, Kansas, and Topeka, can borrow money on thirty to ninety days' time at 6 per cent. The rates for small loans are a little higher, but not more than 8 per cent.

In the reply brief much is said touching the value of the land, and it is again attempted to be shown that the master underestimated its value. We insist that such is not the fact; we believe we have better grounds for claiming that his estimate is too high, but we do not care to discuss the subject further. If the court desires to investigate the evidence and does so, we have no fears that the master's figures will be increased.

Beginning on page 55 of the reply brief is presented an argument that the sum of $400,000 should be added to the

amount on which the company should be permitted to earn an income, because the master found that the company had approximately that amount on hand in cash and credits.

This is evidently an afterthought. We recall no testimony that such sum was used in the business. No mention of the matter has been made heretofore. It is apparent that no such sum of money is needed to carry on the business. The animals shipped to the yards are received in the morning and sold in the forenoon. The charges for yardage and feed are paid at once. The money is collected before the railroad companies are paid, hence there can be no use for capital in this branch of the business.

Attention is called to the fact that an error in computation was made on page 74 of our original brief. We regret the mistake and repeat the figures with the corrections made:

Value of real estate owned and used by the company		$3,600,626 00
Structures and improvements		1,480,000 00
Personal property on hand December 31, 1896		307,377 25
		$5,388,003 25
Deduct horse and mule market		430,420 00
		$4,957,583 25
Gross income of stock yards company, 1896		$1,023,870 29
Deduct amounts received from rents outside property	$6,007 45	
Deduct amounts received from interest and dividends	5,591 53	
Deduct expenditures of operation	365,712 49	
Deduct net income of horse and mule market	3,790 75	
		381,102 22
Net income from business affected by the law		$642,767 98

This is equivalent to a profit of 12.97 per cent. upon a value of $4,957,583.25, which is the rate per cent. earned by

the property affected by the law in 1896 under the master's valuations.

The statutory rates would have made the profits $300,651.77 less, or $342,116.21. This is equivalent to 6.9 per cent. upon $4,957,583.25.

The profits which would have been earned in 1896 if the statutory rates had been in force, $342,116.21, equal 6 per cent. upon $5,701,933.50, which is $744,350.25 more than the value of the property used in the business.

If we take the par value of the stock outstanding December 31, 1896, which was $7,368,650, of which $433,450 had been issued on June 30 of that year, and deduct therefrom the value of property not used for stock-yards purposes and not affected by the law, we have the following:

Par value of stock		$7,368,650
Value of property not used for stock-yards purposes	$1,200,000	
Value of horse and mule market....	430,420	
		1,630,420
Amount of stock affected by law		$5,738,230

The net income which would have been earned under the law in 1896, or $342,116.21, is equivalent to 5.96 per cent. of this sum; in other words, if the par value of the stock be taken as the measure of the value of all the property owned by the stock yards company, still the law in question, if applied to the business of 1896, would have permitted the company to have earned practically 6 per cent. upon all the property affected by the law.

It is urged by the appellants that the question involved

herein should be determined, not by the question as to how much the company may earn, but upon consideration of the value of the services rendered. In this they are arguing themselves out of court. They seem to forget in this, as elsewhere in their argument, that the law is presumed to be valid and the rates prescribed to be just, fair, and reasonable until they have proved them to be confiscatory. Evidence as to what rates are charged elsewhere might raise a presumption regarding the rates at Kansas City, but such presumption can have no weight against the presumption in favor of the validity of the law, and the rates charged at yards in other States where a less volume of business is transacted afford no guidance for the determination of this case (Smyth *vs.* Ames, 169 U. S., 540; 64 Fed. Rep., 165). Besides, unless the rates are confiscatory, the discretion exercised by the legislature in fixing rates cannot be interfered with by the courts.

It is claimed that the labor of distributing the hay sold is very great, and therefore the prices charged for feed are reasonable. The amount of hay consumed at the yards is approximately one thousand tons per month, or forty tons per day (Record, p. 141). If there are a hundred cattle to the pen a ton would be fed to four pens.

The argument that hauling a ton of hay into the yards and distributing it to four pens of cattle should give the company the right to add from two hundred to five hundred per cent. to its value is absurd.

If counsel for appellants are correct in saying that no feed is sold in Kansas and the law does not apply to the Kansas City Stock Yards Company, then the reduction in charges effected by the law is $76,174.20 less than we have figured

for the business of 1896, and the rates cannot be considered as confiscatory.

The appellants seem to argue that the enforcement of the rates prescribed by the law in question may be enjoined even though they are not confiscatory. This question has been set at rest and the rule governing the subject clearly enunciated in the case of San Diego Land and Town Co. *vs.* City of National City, 174 U. S., 739, where it was said:

"It is sufficient to say that upon a careful scrutiny of the testimony our conclusion is that no case is made that will authorize a decree declaring that the rates fixed by the defendant's ordinance, looking at them in their entirety—and we cannot properly look at them in any other light—are such as amount to a taking of property without just compensation, and therefore to a deprivation of property without due process of law."

The substance of the decision is clearly stated in the syllabus, which is as follows:

"Courts will not interfere with the collection of rates established under legislative sanction unless they are so plainly and palpably unreasonable as to make their enforcement equivalent to the taking of property for public use without such compensation as, under the circumstances, is just, both to the owner and the public."

It remains for this court to decide, if the case shall progress so far, whether or not the appellants have shown that the rates prescribed by the act of March 12, 1897, are so plainly and palpably unreasonable as to amount to a taking of property for public use without just compensation therefor. We urge that they have not so shown; that the rates fixed are just and reasonable and are only a wholesome

restriction upon a business impressed with a public use and upon a corporation which has been guilty of great extortion in the past.

A. A. GODARD,
Attorney General.

B. H. TRACY,
Assistant Attorney General.

WASHINGTON, D. C., *November* 10, 1899.

No. 48 /

Br. of Godard for

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In the Supreme Court
of the United States.

CHARLES U. COTTING, AND FRANCIS LEE HIGGINSON, *Appellants*,
vs.
A. A. GODARD, AS ATTORNEY GENERAL OF THE STATE OF KANSAS, THE KANSAS CITY STOCK-YARDS COMPANY, *et al.*, *Appellees*.

BRIEF ON BEHALF OF ATTORNEY GENERAL.

A. A. GODARD,
Attorney-general.

In the Supreme Court
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CHARLES U. COTTING, AND FRANCIS LEE HIGGINSON, *Appellants*,
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No. .....

BRIEF ON BEHALF OF ATTORNEY GENERAL.

IN again presenting this case to the court we shall not attempt to argue all the points which have been raised, but will rely principally upon the former briefs filed, desiring to add such other views and authorities as seem proper.

JURISDICTION.

We desire to again urge that the federal courts are and have been without jurisdiction of this case. It is a suit against the state of Kansas, and therefore violative of the provisions of the eleventh amendment to the constitution of the United States.

The sole purpose of the action, so far as the attorney general is concerned, is to enjoin the commence-

ment and prosecution of criminal actions in the name of the state of Kansas, and in the courts of that state, and is therefore entirely outside the jurisdiction of a court of equity, and not a proper subject for an equitable action.

These objections were overruled in the court below with the general statement that "the court has jurisdiction to enjoin a state officer from enforcing an unconstitutional law," and citing the case of Reagan v. Trust Company, 154 U. S. 362. (See Cotting v. Kansas City Stock-yards Company, 79 Fed. Rep. 679, 681.)

The Reagan case is not in point. It was brought against the railroad commissioners and the attorney general of Texas to restrain them from enforcing certain railroad rates and regulations prescribed by the railroad commissioners, under a statute of Texas authorizing such action on their part, and charging the attorney general with the duty of collecting certain penalties from the railroad corporations violating the regulations so fixed. The injuries sustained by a railroad company through an unlawful exercise of the powers vested in the railroad commissioners under this act would be manifested in a civil action, or actions for the recovery of money, and in no other way, so far at least as the attorney general is concerned. An injunction to restrain the commencement of civil suits is a well known and admittedly proper exercise of equity power.

By the statute under consideration in this case, the only duty imposed upon the attorney general is that of prosecuting violators of the law.

"SEC. 7. That any person or persons violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined for the first offense not more than $100; for the second offense, not less than $100 nor more than $200; and for the third offense, not less than $200 nor more than $500 and by imprisonment in the county jail not exceeding six months for each offense; and for each subsequent offense he or they shall be fined in any sum not less than $1000 and by imprisonment in the county jail not less than six months.

"SEC. 8. It is hereby made the duty of the attorney general to prosecute all violations of the provisions of this act."

All criminal suits in Kansas must be brought in the name of the state. General Statutes of Kansas, 1899, paragraph 4251, is as follows: "A criminal action is one prosecuted by the state as a party against a person charged with a public offense, for the punishment thereof."

The only person other than the stock-yards company and its officers named as a party defendant is the attorney general, and the only mode in which it is sought to prevent official action is to restrain him from commencing criminal suits on behalf of the state. The object of this suit is the state of Kansas. Its intent is to reach the state, and to prevent it from acting, by restraining the only officer through which it can move in such cases, namely, the prosecuting attorney; and not only that, but it is also sought to employ the equity powers of the federal courts to enjoin the institution and prosecution of criminal action, the use of which power for such purposes has been frequently denied but not heretofore granted.

The decisions of this court cited in support of the

assertion that a suit against an officer of a state is not a suit against the state itself are the following:

Poindexter v. Greenhow, 114 U. S. 270.
Allen v. Baltimore & Ohio Rld. Co., 114 id. 311.
Pennoyer v. McConnaughy, 140 id. 1.
In re Tyler, 149 id. 164.
Reagan v. Farmers L. & T. Co., 154 id. 362.
Scott v. Donald, 165 id. 58.
Tindal v. Wesley, 167 id. 204.
Smyth v. Ames, 169 id. 466.

The case of Poindexter v. Greenhow was an action to restrain the sale of personal property taken under a tax levy.

The case of Allen v. Baltimore & Ohio Rld. Co. is almost identically the same. In both cases it was held that a distraint for taxes should be prevented, as tenders had been made in tax-receivable coupons.

The case of Pennoyer v. McConnaughy was a suit against the board of land commissioners of the state of Oregon to enjoin them from reselling swamp lands to which the complainant asserted title.

In re Tyler was a *habeas corpus* proceeding by a state officer who had been arrested for contempt by reason of his having seized for taxes property in the hands of a receiver appointed by a circuit court of the United States, in which it was held that such contempt proceedings were in no sense a suit against the state.

The case of Reagan v. Farmers L. & T. Co. has been previously mentioned.

The case of Scott v. Donald was brought to enjoin state officers from seizing private property sought to be taken under an unconstitutional statute, which action was held not to be a suit against the state.

Tindal v. Wesley was an action of ejectment brought against officers who claimed to hold for their state.

In the Smyth v. Ames cases the defendants were, aside from certain railroad companies, the persons holding the offices of attorney general, secretary of state, auditor of public accounts, state treasurer, and commissioner of public lands and buildings, constituting the state board of transportation, together with two other persons who were secretaries of that board. It is unnecessary here to state the purposes of those actions, as the court is already familiar with them. Attention is called, however, to the fact that the only duties directly imposed upon the attorney general under the law there involved were such as pertained to the functions of the state board of transportation. The statute is quoted in the opinion, 169 U. S. 472, *et seq.* The courts of general jurisdiction in Nebraska are the supreme and district courts, with jurisdiction as shown by paragraphs 2399 and 2417 of the Compiled Statutes of Nebraska, 1895, as follows:

"2399. SEC. 13. (*Jurisdiction.*) The supreme court shall have original jurisdiction in cases relating to the revenue, civil cases in which the state shall be a party, mandamus, *quo warranto*, and *habeas corpus*, and shall have appellate and final jurisdiction of all matters of appeal and proceedings in error which may be taken from the judgments or decrees of the district courts, in all matters of law, fact, or equity, where the rules of law or the principles of equity appear from the files, exhibits or records of said court to have been erroneously determined." (Const., art. VI, § 2.)

"2417. SEC. 24. (*Jurisdiction.*) The district court shall have and exercise general, original and appellate jurisdiction in all matters, both civil and criminal, except where otherwise provided." (Const., art. VI, sec. 9.)

Criminal cases must, under the foregoing statutes, be instituted in the district courts, and they can only reach the supreme court of the state upon appeal. It was the duty of the county attorney and not the duty of the attorney general to prosecute such cases in the lower court. The statutes of Nebraska fixing the duties of the attorney general and of county attorneys are as follows:

"The attorney general shall appear for the state and prosecute and defend all actions and proceedings, civil or criminal, in the supreme court, in which the state shall be interested or a party, and shall also, when requested by the governor or either branch of the legislature, appear for the state and prosecute and defend in any other court, or before any officer, any cause or matter, civil or criminal, in which the state may be a party or interested." (Compiled Statutes of Nebraska, 1895, par. 5024.)

It shall be the duty of the county attorney to appear in the several courts of their respective counties and prosecute and defend, on behalf of the state and county, all suits, applications, or motions, civil or criminal, arising under the laws of the state, in which the state or the county is a party or interested." (Compiled Statutes of Nebraska, 1895, par. 603.)

It therefore appears that no injunction could have been granted in the Nebraska cases that would have had the effect of preventing the attorney general from instituting criminal suits, as no duty devolved upon him so to do. The penalties provided for violations of the Nebraska rate law are suits for damages, to be brought by the shipper, as provided in section 8, or the criminal proceedings provided in section 9, which, under the statutes quoted, could only have been brought by county attorneys and in the lower courts.

It also appears that none of the authorities cited in support of the position that a suit against individuals for the purpose of preventing them as officers of a state from enforcing an unconstitutional statute, to the injury of plaintiff's rights, is not a suit against the state, has gone to the extent of deciding that an injunction can be granted where such injunction would have the effect of preventing the institution of criminal suits.

It is settled that federal courts will not grant an injunction against a state officer when it is conceded that he is proceeding under a valid state statute. (Harkrader v. Wadley, 172 U. S. 148.)

The question which is raised here is as to whether or not the circuit court of the United States has jurisdiction of a suit to enjoin the attorney general of a state from instituting criminal prosecutions in the name of the state, where it is claimed that the statute under which the attorney general will proceed is unconstitutional.

Before proceeding with a further discussion of this question, let us examine the allegations of the complainants against the attorney general. We have seen that the statute imposes no duty upon the attorney general except that of prosecuting in the name of the state criminal suits to punish violators of the law. But for the presence of sections 7 and 8 of this law the attorney general would have nothing to do with it. If the statute had merely fixed prices at which the stock-yards business should be done, then questions with regard thereto would only be judicially determined in suits between the company and its patrons. The legislature saw fit, however, to make a

violation of the law a misdemeanor and charged the attorney general with the prosecution of such offenses, imposing upon that officer the duties which usually devolve upon the county attorney.

The allegations of the bills filed by Cotting and Higginson with reference to the then attorney general are the same, and are as follows:

"That by said section 8 of said so-called act, referred to herein as 'Exhibit A,' it is made the duty of the said Louis C. Boyle, as attorney general of the state of Kansas, to prosecute all of the violations of the provisions of said act; that your orator fears that the said attorney general may cause the defendant corporation and any and all of its officers and agents who shall violate any of its provisions to be arrested and prosecuted; that he will attempt to enforce the so-called act through the courts of Wyandotte county, Kansas, and through the courts of the state of Kansas, by a multiplicity of criminal actions or proceedings against each and every person failing or refusing to comply with the provisions thereof, including the said defendant corporation and its officers and agents, thereby greatly harassing and annoying the said defendant corporation and its officers and agents, and causing them great expense and consuming valuable time, unless the said defendant corporation, its officers and agents, shall put in force at once the said charges and prices specified in said sections 4 and 5 of said so-called act, and shall obey and carry out all of the terms and provisions of said act and each section thereof; and your orator fears that the said Louis C. Boyle, as attorney general, will proceed at once to carry into force said arrests and prosecutions unless immediately restrained by the order and injunction of this honorable court." (Record, pp. 12 and 33.)

The prayers of said bills, so far as they relate to the attorney general, are the same, and are as follows:

"That the said Louis C. Boyle, as attorney general, be adjudged and decreed from attempting, as against

said defendant corporation or any of its officers, agents, servants, or employees, to enforce the provisions of the said so called act or any part thereof, and also that said order and injunction issue against the said Louis C. Boyle, as attorney general, commanding him to refrain from harassing and annoying, by prosecution or otherwise, under the provisions of the said so-called act, the defendant corporation, the said Charles F. Morse, or any of the other officers, servants, agents or employees of the said defendant corporation herein named." (Record, pp. 16 and 37.)

It is now settled that this court will look at the nature of the case, as well as the nominal parties, to determine whether a suit is within the prohibition of the eleventh amendment. (Poindexter v. Greenhow, 114 U. S. 270, 287.)

This suit is not brought against the attorney generral in his natural person, but only in his official capacity. It is not alleged that he will touch or interfere with any of the property of the complainants or the stock-yards company. The object of the suit is to prevent the state itself from proceeding in its own name, in its particular province, and in the exercise of functions peculiar to itself. It is true that neither the revenues nor the property of the state are involved, but it is sought by this action to reach that which is more vital to the state than its material interests, namely, its executive and judicial powers. An injunction is asked against the attorney general to restrain the institution of criminal suits, in order that the state courts may not try them.

In the cases of Poindexter v. Greenhow and Allen v. Baltimore & Ohio Railroad Co., *supra*, it was held that injunction would lie to prevent the seizure of prop-

erty by officers of the state of Virginia after a tender of the amount of the taxes had been made in coupons which the court held to be properly receivable as such; but thereafter, in *Ex parte* Ayres, 123 U. S. 443, this court held that a suit against the attorney general, to enjoin him from bringing any suit in the name of the commonwealth of Virginia to enforce the collection of taxes for the payment of which coupons attached to her bonds had been tendered, was a suit which the circuit court of the United States had no jurisdiction to entertain, as such suit was in law and fact a suit against the state of Virginia.

An examination of the Ayres case will show that the question involved was almost identical with the one we are here discussing. The state of Virginia had issued bonds with coupons attached, which recited that such coupons should be receivable in payment of state taxes. Subsequent legislation had provided that all state taxes must be paid in money. Suits in injunction had been maintained in the federal courts to restrain distraints for taxes in cases where tenders of payment in such coupons had been made, and these injunctions had been twice approved by this court prior to the passage of the act of May 12, 1887. By that act the attorney general was expressly charged with the duty of bringing suits in the name of the commonwealth for the collection of delinquent taxes, notwithstanding any tender that may have been made. Under the decisions of this court, previously made in the Poindexter and Allen cases, the act was void because in violation of the federal constitution. Subjects of Great Brit-

ain brought an action in the circuit court of the United States for the eastern district of Virginia against Ayres, attorney general of that state, and others. The prayer of the bill was that the attorney general of the state of Virginia, and the commonwealth's attorneys for the counties, be restrained by injunction from commencing and prosecuting any suits under the act of May 12, 1887, for the recovery of taxes against parties alleged to be delinquent, but who, in fact, had tendered tax-receivable coupons in payment of taxes due. (Opinion, on page 485.) An injunction was granted, which was disobeyed by the attorney general. In a contempt proceeding he was fined, and ordered committed until it was paid. From this arose the *habeas corpus* proceeding in this court, reported in 123 U. S. 443.

In the opinion, on page 497, it is said:

"The relief sought is against the defendants, not in their individual, but in their representative capacity as officers of the state of Virginia. The acts sought to be restrained are the bringing of suits by the state of Virginia in its own name and for its own use. If the state had been made a defendant to this bill by name, charged according to the allegations it now contains—supposing that such a suit could be maintained—it would have been subjected to the jurisdiction of the court by process served upon its governor and attorney general, according to the precedents in such cases. (New Jersey v. New York, 30 U. S., 5 Pet. 284, 288, 290; Kentucky v. Dennison, 24 How. 66, 96, 97; Rule 5 of 1884, 108 U. S. 574.) If a decree could have been rendered enjoining the state from bringing suits against its taxpayers, it would have operated upon the state only through the officers who by law were required to represent it in bringing such suits, viz., the present defendant, its attorney general, and the commonwealth's attorneys for the several

counties. For a breach of such an injunction these officers would be amenable to the court, as proceeding in contempt of its authority, and would be liable to punishment therefor by attachment and imprisonment.

"The nature of the case as supposed is identical with that of the case as actually presented in the bill, with the single exception that the state is not named as a defendant. How else can the state be forbidden by judicial process to bring actions in its name, except by constraining the conduct of its officers, its attorneys, and its agents? And if all such officers, attorneys and agents are personally subjected to the process of the court, so as to forbid their acting in its behalf, how can it be said that the state itself is not subjected to the jurisdiction of the court as an actual and real defendant?"

Mr. Justice FIELD, in his special concurring opinion, on page 508, says:

"I concur in the judgment discharging from arrest and imprisonment the attorney general of Virginia, and other officers of the state, who were adjudged by the circuit court to be guilty of contempt in refusing to obey the order of that court in the case of Cooper v. Marye, and were fined, and committed until the fine should be paid, and they should purge themselves of their contempt by doing the acts commanded. I also concur in the main position stated in the opinion of the court, upon which the discharge of the petitioner is ordered, namely, that the case of Cooper v. Marye was in law and fact a suit by subjects of a foreign state against the state of Virginia. To a suit of that character the judicial power of the United States cannot, by the eleventh amendment of the constitution, be extended. The object of that suit was to enjoin the attorney general and the commonwealth's attorneys of the several counties and towns of Virginia from bringing any suits in the name of the commonwealth to enforce the collection of taxes for the payment of which coupons originally attached to her bonds had been tendered. To enjoin the officers of the commonwealth, charged with the supervision and management of legal proceedings in her

behalf, from bringing suits in her name, is nothing less than to enjoin the commonwealth, for only by her officers can such suits be instituted and prosecuted. This seems to me an obvious conclusion."

The dissenting opinion seems to be based upon the view that, in all cases where jurisdiction depends upon the party, it is the party named in the record, a doctrine that has been overthrown by this court.

The Ayres case has been followed in the cases of Harkader v. Wadley, 172 U. S. 148, and Fitts v. McGhee, 172 id. 516.

This suit ought not to be maintained, because its sole purpose is to enjoin, in a court of equity, the prosecution of criminal actions.

We have already stated that the only duty devolving upon the attorney general under the statute in question is that of instituting and prosecuting criminal suits which could only be brought in the name of the state of Kansas and in the state courts, and that the only remedy sought against him was to prevent him from so doing. Under the repeated decisions of this court the circuit court was without jurisdiction, and the action should have been dismissed.

In the case of *In re* Sawyer, 124 U. S. 210, Mr. Justice GRAY said:

"The office and jurisdiction of a court of equity, unless enlarged by express statute, are limited to the protection of rights of property. It has no jurisdiction over the prosecution, the punishment or the pardon of crimes or misdemeanor, or over the appointment and removal of public officers. To assume such a jurisdiction, or to sustain a bill in equity to restrain or relieve against proceedings for the punishment of offenses, or for the removal of public officers, is to invade the domain of the courts of common law, or of the ex-

ecutive and administrative department of the government.

"Any jurisdiction over criminal matters that the English court of chancery ever had became obsolete long ago, except as incidental to its peculiar jurisdiction for the protection of infants, or under its authority to issue writs of *habeas corpus* for the discharge of persons unlawfully imprisoned. (2 Hale, P. C. 147; Gee v. Pritchard, 2 Swanst. 402, 413; 1 Spence, Eq. Jur. 689, 690; Attorney General v. Utica Ins. Co. 2 Johns. Ch. 371, 378.)"

In the case of Harkrader v. Wadley, 172 U. S. 170, it was decided that injunction will not lie to stay criminal proceedings in a state court by a federal court.

"We are of opinion, then, that a court of equity, although having jurisdiction over person and property in a case pending before it, is not thereby vested with jurisdiction over crimes committed in dealing with such property by a party before the civil suit was brought, and cannot restrain by injunction proceedings regularly brought in a criminal court having jurisdiction of the crime and of the accused. Much more are we of opinion that a circuit court of the United States, sitting in equity in the administration of civil remedies, has no jurisdiction to stay by injunction proceedings pending in a state court in the name of a state to enforce the criminal laws of such state.

The opinion shows that the Harkrader case was not so decided because of section 720 of the Revised Statutes, but upon grounds which make it applicable to this case.

In the case of Fitts, Attorney General, v. McGhee, 172 U. S. 516, it was decided that—

"A circuit court of the United States has no jurisdiction of a suit in reality against a state, and brought without its consent, by a citizen thereof, though it in-

volves a question under the constitution of the United States.

"A federal court is without jurisdiction of a suit by a private person against the executive and law officers of a state to test the constitutionality of a statute by enjoining any proceeding for its enforcement, where the defendants are charged by the statute with no specific duty in the matter, and have neither done nor attempted any act of wrong or trespass against the person or property of complainant, and, should they act, must do so by formal legal proceedings in the courts in the name of the state. Such a suit is, in effect, one against the state, and is within the prohibition of the eleventh constitutional amendment.

"A federal court of equity has no power to enjoin the institution or prosecution of indictments or other criminal proceedings in a state court." (Syllabus, 19 Supreme Court Reporter, 269.)

It is urged, therefore, that the circuit court had no jurisdiction of this case because it is a suit against the state, and also because it is sought to employ the equity arm of the court to enjoin the commencement and prosecution of criminal suits which can only be brought in the state court and in the name of the state.

We do not claim, as stated by counsel for appellants, that the case of Fitts v. McGhee overrules Reagan v. Farmers' Loan and Trust Co. and Smyth v. Ames, but we claim that there are exceptions to the rule laid down in the Reagan case, and that as the Fitts-McGhee case constituted an exception thereto so does this case, and for stronger reasons. The fact that the legislature has directed an act to be done cannot give a citizen of another state the right to sue the state in a matter concerning such legislative action, neither will the fact that the act so directed is a criminal suit give a court of equity jurisdiction to restrain

such proceeding, upon the claim that the law is void. If the legislature has, by the passage of a law, charged an officer to perform some act, the doing of which will amount to a trespass if the law is void, the courts may assume that the officer will do as the statute directs, and enjoin if it finds the law bad. But neither the person who has done or intends to do a criminal act nor the beneficiary of such act has the right to go into court to obtain an injunction against the law officers of the state to prevent a prosecution, under the claim that either the statute creating such offense or the one directing its prosecution is void.

It is suggested by counsel for appellants that the state has waived the jurisdictional question, and Clark v. Barnard, 108 U. S. 436, is cited. In that case the state appeared by cross-bill and claimed the subject-matter of the action. It appears from the Ayres case that the suit in which the attorney general was held for contempt had been argued on both sides, yet the contempt proceedings were held void because it was a suit against the state. In the Fitts-McGhee case the attorney general had filed his answer in the original suit, and the action had proceeded to judgment before the institution of the contempt proceedings which were held void because such original action was a suit against the state.

In the case of Smyth v. Ames, the question as to whether that was an action against the state of Nebraska was raised for the first time in this court and was here considered and decided. (169 U. S. 518.)

The question of jurisdiction here raised is, so far as it relates to the power of a court of equity to enjoin

criminal proceedings, one of subject-matter, which cannot be waived, and one which may be raised at any time. The other branch of the objection, as to the case being one against a state, is very closely akin to the question of subject-matter, so that it should not be considered as having been waived, unless such waiver has been made in an express manner, by some person authorized to surrender the rights of the state.

EQUITY RULE 94.

Before proceeding to discuss the merits of this case, we desire to suggest that this suit should have been dismissed by the circuit court because of non-compliance with equity rule 94, as the bills show a very imperfect compliance with that rule, and the subsequent progress of the case indicates very clearly that it is such a suit as the rule seeks to prevent. That the allegations of the bills filed by Cotting and Higginson are meager and incomplete in their allegations under said rule, see record, pages 13, 14, 34, 35, and 36. Neither the stock-yards company nor its officers filed any answers in the suits, but allowed decrees *pro confesso* to be taken. The principal witnesses for the complainants are the officers of the stock-yards company, and particularly those named as defendants, Charles F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson.

The testimony of these witnesses shows that their interests and sympathies were with the complainants. When the final decree was rendered and the bills dis-

missed, an order was made, presumably on the application of the complainants, that, notwithstanding the dismissal of the suits, the temporary injunctions granted therein should be continued in force on condition that the defendant The Kansas City Stock Yards Company should give bond in the sum of $200,000, conditioned for the payment of damages occasioned by such injunction, which bond was given, signed by the stock-yards company, by C. F. Morse, vice-president and general manager, and E. E. Richardson, secretary, two of the defendants in said suit. (Record, pp. 947, 948, 961, 962.) The amount of stock held by complainants did not justify them in entering upon this litigation unless it was collusive, as their joint holdings amounted to but nine-tenths of one per cent. of the outstanding capital stock. (Record, pp. 2, 24.)

These facts, taken together, point inevitably to the conclusion that this case is prosecuted by the stock-yards company in violation of the spirit of equity rule 94, and that the suits were commenced merely for the purpose of testing the validity of a law.

REASONABLE INCOME.

Is the due-process-of-law provision of the fourteenth amendment violated by the law under consideration? This will be the only question discussed in this brief, aside from what has been said. As to the other points, we will rely upon the briefs heretofore filed by us. In the reply brief of the appellants, the argument upon this subject is skilfully conducted into diverging byways quite far from the main path. The appellants attempted to show to the circuit court that the application of this law to the business of the Kansas City stock-yards would amount to a taking of their property without due process of law. A demonstration of the question could have been made if the law had been obeyed for a short time, but, instead, a suit was instituted as soon as the law took effect, and a restraining order has been in force ever since. The actual effect of the law in operation must be, therefore, to a large extent conjectural. The burden of proving that the statute is unconstitutional rested upon the appellants, and as the objection urged does not appear upon the face of the law, but is a latent one, with only a contingent existence, which has been twice denied by the circuit court, this court will not be justified in holding the law void unless it clearly appears that the application of the statutory rates will deprive the appellants of their property. The act of the state legislature will not be overthrown unless it is clearly proven to have transgressed the bounds of legislative power. The right of the legislature to regulate the business of the stock-yards company is admitted.

The argument that such a company should be permitted to earn a larger income than a railroad, turnpike or water company is fallacious. The rights of a stockholder in any of the corporations subject to legislative control should be equal, under the constitutional provision we are considering. The stockholders in each are usually private persons. The moneys invested are private funds, and any deprivation of income which would amount to a taking of private property withont due process of law in one case should be so in all, so far as the investor is concerned. It is true that the rights of the public in a business subject to legislative control vary, and it is also true that the nature of investments in purposes subject to regulation differs, and that persons investing in a small and uncertain or fluctuating business should be permitted to receive a greater return than from a large, steady business, so that no fixed rule can be prescribed by which to determine when a legislative regulation amounts to a taking without due process of law. (San Diego Land and Town Co. v. National City, 174 U. S. 739.)

As against the claim that the stockholders of the stock-yards company are entitled to receive larger earnings than investors in railway, turnpike and water companies, we wish to say that the testimony shows that this company has been guilty of extortionate charges in the past; a great part of the stock held by the appellants, and which is the basis of their claim, has been given them without cost, and has been paid for by the patrons of the yards—the public. (Record, p. 342.) The stock is practically all held by the

same parties who have been stockholders from the beginning. Like the business of a railway, turnpike or water company, the damage done a single individual is too small to permit him to fight the corporation single-handed, and the state must step in and protect him; but every reason why the public has an interest in such other corporations applies with equal force and to an equal extent to this, as none are greater monopolies, and none are greater necessities than this one is under present business and trade conditions. It must be remembered that Kansas City is one of the two largest cattle markets in the world, and that the shippers from a great area of country are absolutely compelled to patronize these yards if they would market their animals. (Record, p. 196.) The starting of competitive yards is impossible; they would be opposed by the railroad companies, which now have their facilities for handling this business. The packing-houses are built adjacent to the present plant, with conveniences for buying there, and the commission firms who handle all the stock sold there would be greatly injured by the division of their business, and a division of the market would be detrimental to all the large single interests centered there; so that the opposition of the present stock-yards company and these other interests would prevent capital from engaging in the same line of business. The value of this property has been built up very largely by its power and physical ability to make and enforce exorbitant demands. Of course, the greater its charges and earnings the greater the value of its stock, and the more money it

has been able to expend in and upon property. The fact that the plant is given an overvaluation is clearly shown by the testimony of Col. C. F. Morse, who has been the general manager of the business since its infancy, and who has had the management and control of almost the entire operation of the business and affairs of the company for many years, besides being a large stockholder in the company. He testifies (record, p. 324) as follows:

"Ans. I have tried to explain that the good-will is a part of the value of the property, and the whole property would be decreased in value probably more than one-half if the rates made by the Kansas law were put into force, and I think the good-will would shrink out of sight."

Colonel Morse placed the value of the property of all kinds owned by the company, including an estimated value of $2,000,000 for good-will, at $9,500,000. (Record, p. 319.)

If the effect of the law was such as to absolutely destroy the business of the stock-yards company, it would still have left property much greater in value than one-half of Colonel Morse's estimate, unless the master has placed a value upon the property much greater than its market value, irrespective of the good-will of the business or its value as a going concern.

One-half of Colonel Morse's estimate is.....	$4,750,000
Value of property owned by company and adding its value to stock, but not used in the business, and which would therefore not be affected by destruction of stock-yards business (finding 41, page 76.).....	1,200,000
	$3,550,000

This sum is less by $55,000 than the master estimated the value of the naked land.

The profits arising from the business of the stockyards company seem to have mysteriously fallen off in 1896. The master's table, on page 79 of the record, which is undisputed by the appellants, except as to two items of dividend stock, shows that the total amount of cash invested by the stockholders in this corporation from 1871 to 1896 is $2,484,500. Multiplying the sums invested by the number of years which elapsed to 1896, and dividing that sum by the total amount invested, we have 6.29 as the average number of years such moneys were so invested up to the close of 1896. We have, therefore, as profits upon an investment equivalent to $2,484,500 for six years and four months, cash dividends of $4,660,976, and stock dividends amounting to $4,962,240. Such enormous profits arising from a monopoly most certainly justify the legislature in regulating vigorously the charges which the public are compelled to pay at the yards.

The figures in the summary mentioned in appellant's reply brief (pp. 56, 57) are manifestly unfair and unjust, both in the estimates of the value upon which the income was produced as well as in the effect the law would have upon the business. There is no good reason for claiming that the law would only permit an income of $176,322.71, as stated. Finding No. 33 (pages 69, 70) clearly sets forth the income and expenses for 1896 by items. None of these is disputed by the appellants, but they claim that the items set forth in finding No. 33½

should be included in the maintenance account. This is clearly a mistake, as all these items have been included in the improvement account. They were charged to construction when made. An examination of finding No. 33½ shows that the master had taken all these into account in estimating the value of the improvements, and if they should be considered as a part of the maintenance, then these items should be deducted from the previous value of the improvements on the property.

Finding No. 33 shows that $32,309.22 expended for repairs had been previously charged to maintenance, and this was considered sufficient by the stock-yards company until the necessities of this case led it to claim otherwise. The consideration of this item is of great importance in this case, as the sum so expended in betterments represents five per centum interest on $3,391,693. It may be difficult sometimes to separate expenditures properly chargeable to maintenance or improvements; but when new structures are created, of an entirely different character from the old, representing many times the cost of the old, and adding greatly to the permanency and value of the property, it certainly is not proper to charge the total cost of such improvements to maintenance. Besides which, the principal items in finding No. 33½ represent the cost of new construction.

Upon this subject the circuit court was extremely liberal to the complainants, saying as follows:

"A very large part of the sum last mentioned—all of it, in fact, except about $6000—was expended in building new structures and making permanent improvements, which increased the value of the com-

pany's property to the extent of such expenditures, and therefore cannot be regarded as operating expenses in estimating the net profits. The company itself took this view of the question by charging them to 'construction account,' and in due season it would doubtless have capitalized the amount of such expenses by issuing stock therefor, as it had previously capitalized other expenses of a similar character. At the same time, as buildings, pens, pavements and other similar structures deteriorate in value somewhat from year to year, even where they are repaired in the ordinary way, it is eminently proper, in estimating the net profits, to set aside annually out of the gross income a certain sum to cover such depreciation. The testimony does not show with any great degree of accuracy what sum should be thus set apart annually, in addition to the cost of ordinary repairs; but as the sum of $32,309 appears to have been expended in the year 1896 for ordinary repairs, which sum was charged to the profit-and-loss account under that head, the court concludes that the sum of $50,000 is an adequate amount to cover the annual loss for derioration not made good by ordinary repairs. Fifty-six thousand dollars has accordingly been deducted from the sum of $169,584.65 charged to 'construction account,' and the balance of that sum has been added to the net profits. The result is, that the net income for the year 1896 was $476,984.08, plus $113,584.65, originally charged to 'construction account,' or, in the aggregate, $590,568.73. If the rates prescribed by the Kansas statute for yarding and feeding stock had been in force during the year 1896, the income of the stock-yards company would have been reduced that year to the extent of $300,651.77, leaving a net income of $289,916.96, on the assumption, which is a very reasonable one, that its expenses would have remained a constant quantity, and that the volume of its business would not have been sensibly increased by the reduction in rates. Its income would have been adequate to yield a return of 5.3 per cent. on the value of the property used for stock-yards purposes, as fixed by the master, or 4.6 per cent. on the sum for which the property has been capitalized, first de-

ducting from that sum the value of all property represented by the capital stock which is not used for stock-yards purposes.

"V. Conceding, as we must, that the legislation complained of was radical in its nature and effect, that it reduced the company's income about fifty per cent., and that it prevents it from realizing on the capital invested in its plant such a per cent. as is ordinarily realized on capital invested in other mercantile and business enterprises, still the court is not prepared to hold that the statute is confiscatory, and that it deprives the company of its property without due process of law. It is common knowledge that large sums of money are invested in securities which do not yield a return exceeding five per cent. on the investment, and it is further manifest that the business of the stock-yards company as conducted is not subject to the same risks of loss from bad debts and declining prices which affects many other business enterprises. Moreover, legislative enactments cannot be declared void because the courts entertain doubts of their expediency or validity or because such enactments tend to lessen the valuation which has theretofore been placed on certain private property. In a great variety of ways laws which cannot be challenged have an inevitable tendency to affect injuriously the value of property. The power of the state to fix the maximum price that shall be charged for the use of property affected with a public interest necessarily implies the power to lessen its value somewhat, or at least to lessen it as measured by the income which it might be made to produce if free from public control. In the very nature of things, considerable scope must be given to legislative discretion in determining the validity of statutes like the one now in question, since the judiciary have no power to prescribe a schedule of maximum rates, and it is only where there has been a clear abuse of power, where the rates prescribed by a statute are manifestly unreasonable and operate to deprive a citizen or corporation of that which justly belongs to them, even as against the public, that the courts have power to intervene. We are constrained to hold that the case at bar is not of that character." (Record, pp. 945, 946.)

The manifest error of complainants in deducting the construction account from maintenance renders the figures in their tables, on pages 56 and 57 of the reply brief, absolutely worthless.

What is the investment affected by the law under consideration? The stock-yards company has invested in other things besides the facilities for doing those things mentioned in the law. It holds bank stocks, packing-house stock, lands that never have and never can be used for stock-yards purposes, and which it leases to tenants, and in addition has engaged in a separate business, namely, the horse and mule business, which is done in the state of Missouri, and is not affected by the law in question. This buiness is not necessary for the purposes of the stock-yards. Horses and mules are not shipped with cattle. Their market is not affected by the cattle, sheep or hog market. Horses and mules are not dealt in by the packing-houses; they are sold by and to different classes of people from those dealing in the food-producing animals handled in the yards, and the business is handled in an entirely different way. (Record, p. 136.) The company might equally well engage in the business of handling poultry, eggs, dairy products, or even grain, as all these are produced by the farmers; but if it were so engaged would there be any contention that the stock-yards property should be permitted to earn enough from its business to pay a percentage of profit upon such other business? The land for the horse and mule market was purchased in 1893 and 1894. (Finding No. 24, p. 66.) This property could not have been completed before 1895; conse-

quently the year 1896 was the first or second year in which this property was used by the stock-yards company, and it was a new business venture in the year we are considering. It was not successful in that year. The property cost $360,643.86. The master valued it at $430,420. (Findings Nos. 24 and 34, pp. 66 and 72.) The net income for 1896 was only $3790.75, or one and one-half per cent. of its cost, and eighty-eight hundredths of one per cent. of its value (page 72). Probably the investment was a wise one, and the business is by this time paying a good interest upon its value; but whether it is or not, it is outside of the business we are contemplating, outside of the law we are considering, and outside of our state, and no reason exists why the public doing business at the stock-yards should have imposed upon it the burden of paying interest upon this investment. The master did not find that the horse and mule market was a part of the stock-yards, nor did he find that its property, income or expenses should be included in the computations to determine the profits of the business. In findings Nos. 34 and 35, pages 66 and 67, he recites the extent and cost of the property so used and something of the nature of its business. In finding No. 44, pages 71 and 72, is stated the expense and income of this business, also the estimated value of the property used therein, and also the percentage of profits earned thereon. In finding No. 40, page 75, is mentioned the fact that this expensive property was equipped to handle four hundred per cent. more animals than were ever received there in one day.

Taking Judge THAYER's figures (record, p. 944), and deducting the horse and mule market and its business, we have the following:

Real estate	$3,600,626 00
Improvements	1,480,000 00
Personal property	307,377 25
	$5,388,003 25
Deduct horse and mule market	430,420 00
	$4,957,583 25
Gross income	$1,012,271 22
Expenditures	535,297 14
Balance	$476,974 08
Add increased value from improvements	113,584 65
Net income for 1896	$590,558 73
Deduct income from horse and mule market,	3,790 75
Net income from business affected by the law	$586,767 98
Statutory rates would have reduced this amount	300,651 77
Leaving net profit	$286,116 21

It is true this is a reduction of fifty-one per cent. of the net income, but it leaves a profit amounting to 5¾ per cent. upon an investment of $4,957,583.25, and we contend that Judge THAYER was entirely too liberal in charging $56,000 of the expenditures mentioned in finding No. 33½ to maintenance. The estimate of Judge FOSTER (record, p. 871) is abundantly liberal. The stock-yards company evidently considered their profits for 1896 greater than the sum computed by Judge THAYER, as they declared dividends in that year upon the entire amount of capital stock outstanding to the amount of 12.41 per cent. (Record, p. 79.) To have reduced this dividend 51

per cent. would have made it 6.09 per cent., certainly a reasonable one.

The appellants also attempt to show, by swelling the value of the plant to undue proportions, that the law would permit only a trifling dividend. They add three items in their reply brief, on page 56, none of which are proper. They are:

Omission of parcels used for dumping manure and offal	$126,140 00
Working capital, consisting of cash and credits,	400,000 00
Expenditures for packing plants	817,944 28

The testimony shows that the dumping-grounds consist of cheap lands which the stock-yards company is filling up, thereby making them immensely valuable. (Record, pp. 75, 192, 193, 246, 267; original brief for attorney general, pp. 52, 53, 54.) These lands cannot be used for stock-yards purposes, and will probably be sold when filled. The company is therefore disposing of its offal at a profit, and the benefits to be derived therefrom should be anticipated, if any of the expenditures are to be considered. It is manifestly unfair to claim that the company should be permitted to compute the value of these partially improved speculative lands as a part of its capital upon which to dissipate the earnings of the business.

The fifth item is the surplus mentioned in finding No. 33½. We find no testimony showing that this or any other sum is used as a working capital, with the exception of the $307,377.25 used in buying feed, etc., and which sum has been included in all our calculations and those of the master as working capital and a basis for dividends. The master was not shown

that any further sum than the amount we have mentioned was required as working capital, and the fact that all business of the stock-yards company is conducted on a cash basis, and no expenditures are necessary in carrying on the business, except for feed before money is collected, conclusively disproves the claim as to this item.

The item of expenditures for packing plants is also erroneous. The benefit derived from the location of these plants was the enhancement in value of the stock-yards property, which investment has been returned to the stock-yards company many fold.

Much argument is advanced as to the great expense of delivering the feed in small parcels. These deliveries are all made with horses and wagons belonging to the company, two men going with each team, sixteen to eighteen teams being required to deliver the hay and grain so used. (Record, p. 124.) The total income received from hay and grain in 1896 was $298,197.15, and the net income was $187,994.69. Dividing this by eighteen, we find that the hay and grain delivered by each team during the year brought an average of $16,566, and the net profit arising from the delivery of each team averaged $10,444. This business was handled by the company at an expense which was certainly less than $1000 per annum for each team, and probably less than $500. The feeding is practically all done within a few hours' time (record, p. 367), and the teams so employed can thereafter engage in other duties.

In conclusion, we desire to submit the opinions filed

in the circuit court, that of Judge FOSTER being found on page 862 of the record, and the one by Judge THAYER on page 940, as giving satisfactory reasons for the judgments then entered.

A. A. GODARD,
Attorney General of Kansas.

JANUARY 8, 1901.

W. Y. Morgan, State Printer,
Topeka.

Supreme Court of the United States.

No. 1.—October Term, 1901.

Charles U. Cotting and Francis Lee Higginson, Appellants, *vs.* A. A. Godard, as Attorney General of the State of Kansas, The Kansas City Stock Yards Company, et al.	Appeal from the Circuit Court of the United States for the District of Kansas.

[November 25, 1901.]

In March, 1897, Charles U. Cotting, a citizen of the State of Massachusetts, filed in the Circuit Court of the United States for the District of Kansas a bill of complaint against the Kansas City Stock Yards Company, a corporation of the State of Kansas, and certain officers of that company, and Louis C. Boyle, Attorney General of the State of Kansas. A few days later, Francis Lee Higginson, a citizen of the State of Massachusetts, filed a bill of complaint in the same court and against the same parties.

These suits were subsequently ordered by the court to be consolidated, and were thereafter proceeded in as one.

The plaintiffs respectively alleged that they were stockholders of the Kansas City Stock Yards Company, and that the suits were brought in their own behalf and that of other stockholders having a like interest, who might thereafter join in the prosecution thereof. The main purpose of the suits was to have declared invalid a certain act of the legislature of the State of Kansas, approved March 3, 1897, entitled "An act defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating all charges thereof, and removing restrictions in the trade of dead animals, and providing penalties for violations of this act."

A temporary restraining order was granted, and subsequently a motion for a preliminary injunction was made. Pending that motion the court appointed a special master, with power to take testimony and report the same with his findings, as to all matters and things in issue upon the hearing of the preliminary injunction prayed for. (79 Fed. Rep. 679.) On August 24, 1897, the special master filed his report. On October 4, 1897, the motion for a preliminary injunction was heard on affidavits, the master's report, exceptions thereto on behalf of both parties, and arguments of counsel. The motion was refused, and the restraining order, which had remained in force in the meantime, was set aside. (82 Fed. Rep. 839.)

A stipulation was thereupon entered into that the defendants should forthwith file their answers to the bills; that replications thereto should be immediately filed, and that the cases, thus put at issue, should be heard on final hearing, upon the pleadings, proofs, master's report and exhibits, without further testimony from either party.

On October 28, 1897, after argument, the court dismissed the bills of complaint. (82 Fed. Rep. 850.) In the opinion of Circuit Judge Thayer there was the following order, which was also embodied in the final decree:

"The great importance of the questions involved in these cases will doubtless occasion an appeal to the Supreme Court of the United States, where they will be finally settled and determined. If, on such appeal, the Kansas statute complained of should be adjudged invalid for any reason, and in the meantime the statutory schedule of rates should be enforced, the stock yards company would sustain a great and irreparable loss. Under such circumstances, as was said in substance by the Supreme Court in *Hovey* v. *McDonald*, (109 U. S. 161,) it is the right and duty of the trial court to maintain, if possible, the *status quo* pending an appeal, if the questions at issue are involved in doubt, and equity rule 93 was enacted in recognition of that right. The court is of opinion that the cases at bar are of such moment and the questions at issue so balanced with doubt, as to justify and require an exercise of the power in question. Therefore, although the bills will be dismissed, yet an order will at the same time be entered restoring and continuing in force the injunction which was heretofore granted for the term of ten days, and if in the meantime an appeal shall be taken, such injunction will be continued in force until the appeal is heard and determined in the Supreme Court of the United States: provided that, in addition to the ordinary appeal bond, the Kansas City Stock Yards Company shall make and file in this court its bond in the penal sum of $200,000, payable to the clerk of this court and his successors in office, for the benefit of whom it may concern, conditioned that in the event of the decree dismissing the bills is affirmed, it will, on demand, pay to the party or parties entitled thereto all overcharges for yarding and feeding live stock at its stock yards in Kansas City, Kansas, and Kansas City, Missouri, which it may have exacted in violation of sections 4 and 5 of the Kansas statute relative to stock yards, approved March 3, 1897, since an injunction was first awarded herein, to wit, on April —, 1897; and that it will in like manner pay such overcharges, if any, as it may continue to exact in violation of said statute during the pendency of the appeal; said obligation to become void if the statute in question shall be pronounced invalid by the Supreme Court." (82 Fed. Rep. 857.)

On November 4, 1897, an appeal was duly taken and allowed to this court.

Subsequently, Louis C. Boyle's term of office as Attorney General having expired, his successor, A. A. Godard, was substituted as a party defendant.

The act of the legislature of the State of Kansas is in the following terms:

"SEC. 1. Any stock yards within this State, into which live stock is received for the purpose of exposing or having the same exposed for sale or feeding, and doing business for a compensation, and which for the preceding twelve months shall have had an average daily receipt of not less than one hundred head of cattle, or three hundred head of hogs, or three hundred head of sheep, are hereby declared to be public stock yards.

"SEC. 2. Any person, company, or corporation owning or operating any public stock yard or stock yards in this State is hereby declared to be a public stock yards operator, whether living or being within this State or not.

"SEC. 3. Every such public stock yards operator or operators shall annually, on the 31st day of December of each year, file with the secretary of State, an itemized statement certified and sworn to, setting forth the number of head of cattle, calves, sheep, hogs, horses and mules received in his or their public stock yards during the year next preceding.

"SEC. 4. It shall be unlawful for the owners, proprietors, or the employees of the owners or proprietors of any such public stock yards within this State, to charge for driving, yarding, watering, and weighing of stock, greater prices than the following: For driving, yarding, watering and weighing of cattle, 15 cents per head; calves, 8 cents per head; hogs, 6 cents per head; sheep, 4 cents per head; and there shall be but one yardage charged.

"SEC. 5. It shall be unlawful for the owner, owners, or proprietors, or their employees, of any such stock yards within this State, to sell and deliver at the rate of less than two thousand pounds for a ton of hay, or any part thereof, the same to be of good quality, or to charge for or to sell the same at more than one hundred per cent. above the average market price, or value of such hay upon the markets of the towns or cities wherein such stock yards are located, upon the day preceding such sale and delivery; and it shall also be unlawful for any such owners, or proprietors, or employees, to sell and deliver less than seventy pounds of corn in the ear for a bushel, or less than fifty-six pounds of shelled corn for a bushel or to charge for or to sell the same at more than one hundred per cent. above the average market price or value of such ear corn or shelled corn on the markets of the towns or cities wherein said stock yards are located, on the day next preceding such sale and delivery. All feed not above named shall be sold for no greater per cent. of profit than hereinbefore provided.

"SEC. 6. It shall be unlawful for the owners or proprietors of any stock yards to prohibit the owner or owners, or the representatives of any owner or owners of any dead stock in such yard or yards from selling such dead stock to any person or persons.

"SEC. 7. That any person or persons violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined for the first offense not more than one hundred dollars; for the second offense not less than one hundred dollars nor more than two hundred dollars; and for the third offense not less than two hundred dollars nor more than five hundred dollars and by imprisonment in the county jail not exceeding six months for each offense; and for each subsequent offense he or they shall be fined in any sum not less than one thousand dollars and by imprisonment in the county jail not less than six months.

"SEC. 8. It is hereby made the duty of the attorney general to prosecute all violations of the provisions of this act.

"SEC. 9. All acts or parts of acts in conflict with this act are hereby repealed.

"SEC. 10. This act shall take effect and be in force from and after its publication in the official State paper." (Laws of Kansas, 1897, chap. 240, p. 448.)

Mr. Justice BREWER, after making the above statement, delivered the following opinion, and announced the conclusion and judgment of the Court.

The learned Circuit Judge, in deciding the case, appreciated the importance of the questions involved, and although denying the relief sought by the plaintiffs, exercised his power of continuing the restraining order until such time as these questions could be determined. Twice has this case been argued before us. We have had the benefit of able arguments and elaborate briefs of distinguished counsel. That the questions are difficult of solution no one reading the following statement will we think doubt.

It has been wisely and aptly said that this is a government of laws and not of men; that there is no arbitrary power located in any individual or body of individuals; but that all in authority are guided and limited by those provisions which the people have, through the organic law, declared shall be the measure and scope of all control exercised over them.

We shall not attempt to determine all the questions presented, and yet it is fitting that we should state them, and some of the reasons urged in support of their decision one way or the other.

The first we notice is the principal matter in respect to which testimony was offered, which has been most largely discussed by counsel on both sides, and that is the validity of the reduction in the charges of the stock yards company made by the act in question. Has the State the power to legislate on this matter, and, if so, can its legislation be upheld?

In *Munn* v. *Illinois*, (94 U. S. 113,) it was held that the State had power to fix the maximum charges for the storing of grain in warehouses in Chicago, the court saying (p. 126):

"Property does become clothed with a public interest when used in a manner to make it of public consequence and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use, but so long as he maintains the use he must submit to the control."

While there was a division of opinion in the court, yet the doctrine thus stated received the assent of a majority of its members and has been reaffirmed since, although accompanied by a constant dissent. (*Budd* v. *New York*, 143 U. S. 517; *Brass* v. *Stoeser*, 153 U. S. 391.) See also the fol-

lowing cases in State courts: *People* v. *Budd*, (117 N. Y. 1;) *Railway* v. *Railway*, (30 Ohio St. 604;) *State* v. *Gas Company*, (34 Ohio St. 572;) *Davis* v. *The State*, (68 Alabama, 58;) *Baker* v. *The State*, (54 Wis. 368;) *Nash* v. *Page*, (80 Ken. 539;) *Storage Co.* v. *Southwark Co.*, (105 Penn. St. 248;) *Sawyer* v. *Davis*, (136 Mass. 239;) *Breckbill* v. *Randall*, (102 Ind. 528;) *Delaware R. R. Co.* v. *Central Stock Yard Co.*, (45 N. J. 50.)

These decisions go beyond but are in line with those in which was recognized the power of the State to regulate charges for services connected with any strictly public employment, as, for instance, in the matter of common carriage, supply of water, gas, &c. (*Spring Valley Water Works* v. *Schottler*, 110 U. S. 347; *Railroad Commission Cases*, 116 U. S. 307; *Wabash Ry. Co.* v. *Illinois*, 118 U. S. 557; *Dow* v. *Beidelman*, 125 U. S. 680; *Chicago &c. Railway Co.* v. *Minnesota*, 134 U. S. 418; *Chicago &c. Railway Co.* v. *Wellman*, 143 U. S. 339; *Reagan* v. *Trust Co.*, 154 U. S. 362; *St. Louis & San Francisco Ry. Co.* v. *Gill*, 156 U. S. 649; *Covington &c. Turnpike Co.* v. *Sandford*, 164 U. S. 578; *Smyth* v. *Ames*, 169 U. S. 466; *San Diego Land Co.* v. *National City*, 174 U. S. 739; *Chicago, Milwaukee & St. Paul Ry. Co.* v. *Tompkins*, 176 U. S. 167.)

Tested by the rule laid down in *Munn* v. *Illinois*, it may be conceded that the State has the power to make reasonable regulation of the charges for services rendered by the stock yards company. Its stock yards are situated in one of the gateways of commerce, and so located that they furnish important facilities to all seeking transportation of cattle. While not a common carrier, nor engaged in any distinctively public employment, it is doing a work in which the public has an interest, and, therefore, must be considered as subject to governmental regulation.

But to what extent may this regulation go? Is there no limit beyond which the State may not interfere with the charges for services either of those who are engaged in performing some public service, or of those who, while not engaged in such service, have yet devoted their property to a use in which the public has an interest? And is the extent of governmental regulation the same in both of these classes of cases?

In *Munn* v. *Illinois*, one of the latter class, in which the power of governmental regulation was affirmed, it was said (p. 125):

"From this it is apparent that down to the time of the adoption of the Fourteenth Amendment, it was not supposed that statutes regulating the use, or even the price of the use, of private property necessarily deprived an owner of his property without due process of law. Under some circumstances they may, but not under all."

In *Budd* v. *New York* it was not charged or shown that the rates prescribed by the legislature were unreasonable, and the only question was the power of the legislature to interfere at all in the matter. The same is true of *Brass* v. *Stoeser*, in which nothing was presented calling for any consideration of the test of reasonableness, or of a limit to the legislative power.

As to those cases in which governmental regulation of charges was in respect to parties doing some public service the following is a resume of the decisions. In *Spring Valley Water Works* v. *Schottler* it was said (p. 354):

"What may be done if the municipal authorities do not exercise an honest judgment, or if they fix upon a price which is manifestly unreasonable, need not now be considered, for that proposition is not presented by this record. The objection here is not to any improper prices fixed by the officers, but to their power to fix prices at all."

In *Railroad Commission Cases* (p. 331):

"From what has thus been said it is not to be inferred that this power of limitation or regulation is itself without limit. This power to regulate is not a power to destroy, and limitation is not the equivalent of confiscation. Under pretence of regulating fares and freights the State cannot require a railroad corporation to carry persons or property without reward; neither can it do that which in law amounts to a taking of private property for public use without just compensation or without due process of law."

In *Wabash Railway Co.* v. *Illinois* nothing was said affecting the question of the extent of the power of the legislature. In *Dow* v. *Beidelman* the quotation heretofore made from the Railroad Commission Cases was quoted with approval. In *Chicago, Milwaukee & St. Paul Ry. Co.* v. *Minnesota* the same passage was quoted, and it was added (p. 458):

"If the company is deprived of the power of charging reasonable rates for the use of its property, and such deprivation takes place in the absence of an investigation by judicial machinery, it is deprived of the lawful use of its property, and thus, in substance and effect, of the property itself, without due process of law and in violation of the Constitution of the United States; and in so far as it is thus deprived, while other persons are permitted to receive reasonable profits upon their invested capital, the company is deprived of the equal protection of the laws."

In *Chicago &c. Railway Co.* v. *Wellman* it was said (p. 344):

"The legislature has power to fix rates, and the extent of judicial interference is protection against unreasonable rates."

In *Reagan* v. *Farmers' Loan & Trust Co.* (p. 399):

"The equal protection of the laws which, by the Fourteenth Amendment, no State can deny to the individual, forbids legislation, in whatever form it may be enacted, by which the property of one individual is, without compensation, wrested from him for the benefit of another, or of the public. This, as has been often observed, is a government of law, and not a government of men, and it must never be forgotten that under such a government, with its constitutional limitations and guarantees, the forms of law and the machinery of government, with all their reach and power, must in their actual workings stop on the hither side of the unnecessary and uncompensated taking or destruction of any private property, legally acquired and legally held."

And again (p. 412):

"It is unnecessary to decide, and we do not wish to be understood as laying down as an absolute rule, that in every case a failure to produce some profit to those who have invested their money in the building of a road is conclusive that the tariff is unjust and unreasonable. And yet justice demands that every one should receive some compensation for the use of his money or property, if it be possible without prejudice to the rights of others. There may be circumstances which would justify such a tariff; there may have been extravagance and needless expenditure of money; there may be waste in the management of the road; enormous salaries, unjust discrimination as between individual shippers, resulting in general loss. The construction may have been at a time when material and labor were at the highest price, so that the actual cost far exceeds the present value; the road may have been unwisely built, in localities where there is no sufficient business to sustain a road. Doubtless, too, there are many other matters affecting the rights of the community in which the road is built as well as the rights of those who have built the road."

In *St. Louis & San Francisco Ry. Co.* v. *Gill* is this language (p. 657):

"This court has declared, in several cases, that there is a remedy in the courts for relief against legislation establishing a tariff of rates which is so unreasonable as to practically destroy the value of property of companies engaged in the carrying business."

In *Covington &c. Turnpike Co.* v. *Sandford* (p. 597):

"The legislature has the authority, in every case, where its power has not been restrained by contract, to proceed upon the ground that the public may not rightfully be required to submit to unreasonable exactions for the use of a public highway established and maintained under legislative authority. If a corporation cannot maintain such a highway and earn dividends for stockholders, it is a misfortune for it and them which the constitution does not require to be remedied by imposing unjust burdens upon the public. So that the right of the public to use the defendant's turnpike upon payment of such tolls as in view of the nature and value of the service rendered by the company are reasonable is an element in the general inquiry whether the rates established by law are unjust and unreasonable. That inquiry also involves other considerations, such, for instance, as the reasonable cost of maintaining the road in good condition for public use and the amount that may have been really and necessarily invested in the enterprise. In short, each case must depend upon its special facts; and when a court, without assuming itself to prescribe rates, is required to determine whether the rates prescribed by the legislature for a corporation controlling the public highway are, as an entirety, so unjust as to destroy the value of its property for all the purposes for which it was acquired, its duty is to take into consideration the interests both of the public and of the owner of the property, together with all other circumstances that are fairly to be considered in determining whether the legislature has, under the guise of regulating rates, exceeded its constitutional authority, and practically deprived the owner of property without due process of law."

In *Smyth* v. *Ames*, after an elaborate discussion of the question of rates and the power of the legislature in respect thereto, it was said (pp. 546, 547):

"We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under the particular rates prescribed by statute and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."

In *San Diego Land Co.* v. *National City* (p. 757):

"The contention of the appellant in the present case is that in ascertaining what are just rates the court should take into consideration the cost of its plant; the cost per annum of operating the plant, including interest paid on money borrowed and reasonably necessary to be used in constructing the same; the annual depreciation of the plant from natural causes resulting from its use; and a fair profit to the company over and above such charges for its services in supplying the water to consumers, either by way of interest on the money it has expended for the public use, or upon some other fair and equitable basis. Undoubtedly, all these matters ought to be taken into consideration, and such weight be given them, when rates are being fixed, as under all the circumstances will be just to the company and to the public. The basis of calculation suggested by the appellant is, however, defective in not requiring the real value of the property and the fair value in themselves of the services rendered to be taken into consideration. What the company is entitled to demand, in order that it may have just compensation, is a fair return upon the reasonable value of the property at the time it is being used for the public. The property may have cost more than it ought to have cost, and its outstanding bonds for money borrowed and which went into the plant may be in excess of the real value of the property. So that it cannot be said that the amount of such bonds should in every case control the question of rates, although it may be an element in the inquiry as to what is, under all the circumstances considered, just both to the company and to the public."

And also affirming the limits of judicial interference with legislative action (p. 754):

"But it should also be remembered that the judiciary ought not to interfere with the collection of rates established under legislative sanction unless they are so plainly and palpably unreasonable as to make their enforcement equivalent to the taking of property for public use without just compensation as under all the circumstances is just both to the owner and to

the public; that is, judicial interference should never occur unless the case presents, clearly and beyond all doubt, such a flagrant attack upon the rights of property under the guise of regulations as to compel the court to say that the rates prescribed will necessarily have the effect to deny just compensation for private property taken for the public use."

Nothing was said in *Chicago &c. Ry. Co.* v. *Tompkins* throwing any light upon the questions heretofore referred to.

In the light of these quotations, this may be affirmed to be the present scope of the decisions of this court in respect to the power of the legislature in regulating rates: As to those individuals and corporations who have devoted their property to a use in which the public has an interest, although not engaged in a work of a confessedly public character, there has been no further ruling than that the State may prescribe and enforce reasonable charges. What shall be the test of reasonableness in those charges is absolutely undisclosed.

As to parties engaged in performing a public service, while the power to regulate has been sustained, negatively the court has held that the legislature may not prescribe rates which if enforced would amount to a confiscation of property. But it has not held affirmatively that the legislature may enforce rates which stop only this side of confiscation and leave the property in the hands and under the care of the owners without any remuneration for its use. It has declared that the present value of the property is the basis by which the test of reasonableness is to be determined, although the actual cost is to be considered, and that the value of the services rendered to each individual is also to be considered. It has also ruled that the determination of the legislature is to be presumed to be just, and must be upheld unless it clearly appears to result in enforcing unreasonable and unjust rates.

In this case, as heretofore indicated, a volume of testimony has been taken, mainly upon the question of the cost and value of the stock yards and the effect upon the income of the company by reason of the proposed reduction. This testimony was taken before a master, with instructions to report the cost of the stock yards, the present value of the property, the receipts and expenditures thereof, the manner of operation, and such other matters as might be pertinent for a determination of the case. Stated in general terms, his findings were that the value of the property used for stock yard purposes, including the value of certain supplies of feed and materials which were on hand December 31, 1896, is $5,388,003.25; that the gross income realized by the stock yards company during the year 1896, which was taken as representing its average gross income, was $1,012,271.22. The total expenditures of the company for all purposes during the same period amounted to $535,297.14—thus indicating a net income for the year of $476,974.08. The court, however,

increased the estimate of the net income by adding to the expenditures the sum of $113,584.65, expended in repairs and construction, thus placing the net income at the amount of $590,558.73. If the rates prescribed by the Kansas statute for yarding and feeding stock had been in force during the year 1896 the income of the stock yards company would have been reduced that year $300,651.77, leaving a net income of $289,916.96. This would have yielded a return of 5.3 per cent. on the value of property used for stock yard purposes, as fixed by the master. Or, if the capital stock be taken, after deducting therefrom such portion thereof which represents property not used for stock yard purposes, the return would be 4.6 per cent.

Counsel for appellants challenge the correctness of these findings, and seek to show by a review of the testimony that no such per cent. of return on the real value of the investment would be received by the company in case the proposed reduction is put into effect. But without stopping to enter into the inquiry suggested by their contention, it is enough for our present purpose to state in general the conclusions of the master and the court.

On the other hand, it is shown by the findings, approved by the court, that the prices charged in these stock yards are no higher, and in some respects lower, than those charged in any other stock yards in the country, and finding 37 is—

"The other stock yards heretofore enumerated are operated generally in the same manner as those at Kansas City, and there is and was for a long time prior to March 12, 1897, active and growing competition among their owners to attract and secure to each the shipment of live stock from competitive territories. Kansas City is the greatest stocker and feeder market in the world, and while Chicago exceeds it as a general market, yet, because of the expense of transportation from Kansas City there, and the loss in weight by shrinkage during such transportation, the live stock shipped to and sold at Kansas City in 1896 realized for its owners more than $1,500,000 in excess of the amount which would have been realized if forwarded from Kansas City to and sold on the Chicago market."

Now, in the light of these decisions and facts, it is insisted that the same rule as to the limit of judicial interference must apply in cases in which a public service is distinctly intended and rendered and in those in which without any intent of public service the owners have placed their property in such a position that the public has an interest in its use. Obviously there is a difference in the conditions of these cases. In the one the owner has intentionally devoted his property to the discharge of a public service. In the other he has placed his property in such a position that willingly or unwillingly the public has acquired an interest in its use. In the one he deliberately undertakes to do that which is a proper work for the State. In the other, in pursuit of merely private gain, he has placed his property in such a position that the public has become interested in its use. In the one it may be said that he voluntarily accepts all the con-

ditions of public service which attach to like service performed by the State itself. In the other that he submits to only those necessary interferences and regulations which the public interests require. In the one he expresses his willingness to do the work of the State, aware that the State in the discharge of its public duties is not guided solely by a question of profit. It may rightfully determine that the particular service is of such importance to the public that it may be conducted at a pecuniary loss, having in view a larger general interest. At any rate, it does not perform its services with the single idea of profit. Its thought is the general public welfare. If in such a case an individual is willing to undertake the work of the State, may it not be urged that he in a measure subjects himself to the same rules of action, and that if the body which expresses the judgment of the State believes that the particular services should be rendered without profit he is not at liberty to complain? While we have said again and again that one volunteering to do such services cannot be compelled to expose his property to confiscation, that he cannot be compelled to submit its use to such rates as do not pay the expenses of the work, and therefore create a constantly increasing debt which ultimately works its appropriation, still is there not force in the suggestion that as the State may do the work without profit, if he voluntarily undertakes to act for the State he must submit to a like determination as to the paramount interests of the public?

Again, wherever a purely public use is contemplated the State may and generally does bestow upon the party intending such use some of its governmental powers. It grants the right of eminent domain by which property can be taken, and taken not at the price fixed by the owner, but at the market value. It thus enables him to exercise the powers of the State, and exercising those powers and doing the work of the State is it wholly unfair to rule that he must submit to the same conditions which the State may place upon its own exercise of the same powers and the doing of the same work? It is unnecessary in this case to determine this question. We simply notice the arguments which are claimed to justify a difference in the rule as to property devoted to public uses from that in respect to property used solely for purposes of private gain, and which only by virtue of the conditions of its use becomes such as the public has an interest in.

In reference to this latter class of cases, which is alone the subject of present inquiry, it must be noticed that the individual is not doing the work of the State. He is not using his property in the discharge of a purely public service. He acquires from the State none of its governmental powers. His business in all matters of purchase and sale is subject to the ordinary conditions of the market and the freedom of contract. He can force no one to sell to him, he cannot prescribe the price which he shall pay. He

must deal in the market as others deal, buying only when he can buy and at the price at which the owner is willing to sell, and selling only when he can find a purchaser and at the price which the latter is willing to pay. If under such circumstances he is bound by all the conditions of ordinary mercantile transactions he may justly claim some of the privileges which attach to those engaged in such transactions. And while by the decisions heretofore referred to he cannot claim immunity from all State regulation he may rightfully say that such regulation shall not operate to deprive him of the ordinary privileges of others engaged in mercantile business.

Pursuing this thought, we add that the State's regulation of his charges is not to be measured by the aggregate of his profits, determined by the volume of business, but by the question whether any particular charge to an individual dealing with him is, considering the service rendered, an unreasonable exaction. In other words, if he has a thousand transactions a day and his charges in each are but a reasonable compensation for the benefit received by the party dealing with him, such charges do not become unreasonable because by reason of the multitude the aggregate of his profits is large. The question is not how much he makes out of his volume of business, but whether in each particular transaction the charge is an unreasonable exaction for the services rendered. He has a right to do business. He has a right to charge for each separate service that which is reasonable compensation therefor, and the legislature may not deny him such reasonable compensation, and may not interfere simply because out of the multitude of his transactions the amount of his profits is large. Such was the rule of the common law even in respect to those engaged in a quasi public service independent of legislative action. In any action to recover for an excessive charge, prior to all legislative action, whoever knew of an inquiry as to the amount of the total profits of the party making the charge? Was not the inquiry always limited to the particular charge, and whether that charge was an unreasonable exaction for the services rendered? As said by Mr. Justice Bradley, in *Transportation Co.* v. *Parkersburg*, (107 U. S. 691, 699):

"It is also obvious that since a wharf is property and wharfage is a charge or rent for its temporary use, the question whether the owner derives more or less revenue from it, or whether more or less than the cost of building and maintaining it, or what disposition he makes of such revenue, can in no way concern those who make use of the wharf and are required to pay the regular charges therefor; provided, always, that the charges are reasonable and not exorbitant."

In *Canada Southern Railway Co.* v. *International Bridge Co.*, (8 App. Cas. 723, 731,) Lord Chancellor Selborne thus expressed the decision of the House of Lords:

"It certainly appears to their Lordships that the principle must be, when reasonableness comes in question, not what profit it may be reasonable for a company to make, but what it is reasonable to charge to the person who is charged. That is the only thing he is concerned with. They do not say that the case may not be imagined of the results to a company being so enormously disproportionate to the money laid out upon the undertaking as to make that of itself possibly some evidence that the charge is unreasonable, with reference to the person against whom it is charged. But that is merely imaginary. Here we have got a perfectly reasonable scale of charges in everything which is to be regarded as material to the person against whom the charge is made. One of their Lordships asked counsel at the bar to point out which of these charges were unreasonable. It was not found possible to do so. In point of fact, every one of them seems to be, when examined with reference to the service rendered and the benefit to the person receiving that service, perfectly unexceptionable, according to any standard of reasonableness which can be suggested. That being so, it seems to their Lordships that it would be a very extraordinary thing indeed, unless the legislature had expressly said so, to hold that the persons using the bridge could claim a right to take the whole accounts of the company, to dissect their capital account, and to dissect their income account, to allow this item and disallow that, and, after manipulating the accounts in their own way, to ask a court to say that the persons who have projected such an undertaking as this, who have encountered all the original risks of executing it, who are still subject to the risks which from natural and other causes every such undertaking is subject to, and who may possibly, as in the case alluded to by the learned judge in the court below, the case of the Tay Bridge, have the whole thing swept away in a moment, are to be regarded as making unreasonable charges, not because it is otherwise than fair for the railway company using the bridge to pay those charges, but because the bridge company gets a dividend which is alleged to amount, at the utmost, to 15 per cent. Their Lordships can hardly characterize that argument as anything less than preposterous."

The authority of the legislature to interfere by a regulation of rates is not an authority to destroy the principles of these decisions, but simply to enforce them. Its prescription of rates is *prima facie* evidence of their reasonableness. In other words, it is a legislative declaration that such charges are reasonable compensation for the services rendered, but it does not follow therefrom that the legislature has power to reduce any reasonable charges because by reason of the volume of business done by the party he is making more profit than others in the same or other business. The question is always not what does he make as the aggregate of his profits, but what is the value of the services which he renders to the one seeking and receiving such services. Of course, it may sometimes be, as suggested in the opinion of Lord Chancellor Selborne, that the amount of the aggregate profits may be a factor in considering the question of the reasonableness of the charges, but it is only one factor, and is not that which finally determines the question of reasonableness. Now, the controversy in the Circuit Court proceeded upon the theory that the aggregate of

profits was the pivotal fact. To that the testimony was adduced, upon it the findings of the master were made, and in recognition of that fact the opinion of the court was announced. Obviously, as we think, in all this the lines of inquiry were too narrowly pursued.

It may be said that the conclusion of the court was directly against the plaintiffs, and therefore was a decision against all their contentions. It was found, however, that the charges made by the defendant were no greater (and in many instances, less) than those of any other stock yards in the country. Nothing is stated to outweigh the significance of that finding. While custom is not controlling, for there may be a custom on the part of all stock yards companies to make excessive charges, yet in the absence of testimony to the contrary a customary charge should be regarded as reasonable and rightful. In Gunning on Laws of Tolls, the author says (p. 61): "Long usage and acquiescence in one uniform payment for toll is undoubtedly cogent evidence that it is reasonable." In *Shepard* v. *Payne*, (12 C. B. [N. S.] 414, 433,) Willes, J., said:

"A fee need not be of a fixed and ascertained, but may be of a reasonable amount; and, exercising the power conferred upon us by the case, to draw inferences of fact, we may conclude that, if the claim can be sustained in point of law, it was in fact for a reasonable fee. If so, then, looking to the amount established for similar services by other officers, and remembering what fees have been paid and received within the memory of us all in the Courts of Westminster Hall and at the Assizes, we think there can be little doubt that the fees in question, so far as amount is concerned, are in fact reasonable."

In *Railroad Company* v. *Wilson*, (119 Ind. 352, 358,) is this language:

"The law makes it the duty of every common carrier to receive and carry all goods, . . . and authorizes a reasonable reward to be charged for the service. The amount to be paid is, in a measure, subject to the agreement of the parties; but when the amount is not fixed by contract, the law implies that the carrier shall have a reasonable reward, which is to be ascertained by the amount commonly or customarily paid for other like services. (*Johnson* v. *Pensacola &c. R. R Co.*, 16 Florida, 623; Angell, Carriers, section 392; Lawson Contracts of Carriers, section 125.)"

Again, the findings show that the gross receipts for the year 1896 were $1,012,271.22; that the total number of stock received during the same time was 5,471,246. In other words, the charge per capita was 18 cents and 5 mills. So that one shipping to the stock yards one hundred head of stock was charged $18.50 for the privileges of the yard, the attendance of the employees and the feed furnished. While from these figures alone we might not say that the charges were reasonable or unreasonable, we cannot but be impressed with the fact that the smallness of the charge suggests no extortion. Further, as heretofore noticed, the findings show that the establishment of these yards has operated to secure to the shippers during a single

year $1,500,000 more than they would have realized in case of their non-existence and a consequent shipment to Chicago, the other great stock market of the country.

It is not to be wondered that the trial court, in deciding the case, observed:

"Conceding, as we must, that the legislation complained of was radical in its nature and effect, that it reduced the company's income about fifty per cent., and that it prevents it from realizing on the capital invested in its plant such a per cent. as is ordinarily realized on capital invested in other mercantile and business enterprises, still," &c.

But inasmuch as the inquiry in that court proceeded upon lines which we have indicated were too narrow, it might well be that if there were no other questions we ought to simply send back the case for further investigation upon the true lines of inquiry. There are, however, other questions which compel notice, and one is that suggested by the seventh section in the statute, which provides a punishment for the first offense of not more than $100, for the second offense not less than $100 nor more than $200, for the third offense not less than $200 nor more than $500 and imprisonment in the county jail not exceeding six months, and for each subsequent offense a fine of not less $1,000 and imprisonment not less than six months. The language of this section, taken in connection with the balance of the statute, is not entirely clear. The previous prescriptions of the statute are of a certain charge per head. Now, does this section contemplate a separate offense with a separate penalty for each excessive charge per head, or does it contemplate a single penalty for a violation of the statute in respect to the entire number of stock received in one shipment? The difference is significant. Taking the total number shipped to these stock yards in the year 1896, it amounted to an average of about 15,000 head per day. Would that in case of an excessive charge for each head mean 15,000 violations of the statute? If so, as after the third offense the fine could not be less than $1,000 for each offense, a single day's penalties would aggregate at least $15,000,000. While the fact is not clearly disclosed by the testimony, doubtless the shipments were made by separate shippers in bunches all the way from 50 to 500 in number. If the penalty attaches simply to the charge for each shipment as a single act the burden, though large, might not be deemed excessive, but if it attaches to that for each particular head of stock the penalties become enormous. It may be said that this is a penal statute, and therefore it is to be construed in favor of the delinquent, and that we have a right to expect that the State courts will construe the penalty as not attaching to the charge for each head of stock, but only to that upon the separate bunches shipped by different individuals. But is the language so clear that there is no doubt as to the construction? Is there not enough in it to justify a

construction which may be accepted by the trial courts and approved by the Supreme Court of the State, and the construction of a State statute by the Supreme Court of the State is in a case like this conclusive upon us. Must the party upon whom such a liability is threatened take the chances of the construction of a doubtful statute? If the one construction is placed upon it, then obviously, even accepting the largest estimate of value placed by any witness upon the property of the company, a single day's violation of the statute would exhaust such entire value in satisfaction of the penalties incurred. In this feature of the case we are brought face to face with a question which legislation of other States is presenting. Do the laws secure to an individual an equal protection when he is allowed to come into court and make his claim or defense subject to the condition that upon a failure to make good that claim or defense the penalty for such failure either appropriates all his property, or subjects him to extravagant and unreasonable loss? Let us make some illustrations to suggest the scope of this thought.

Suppose a law were passed that if any laboring man should bring or defend an action and fail in his claim or defense, either in whole or in part, he should in the one instance forfeit to the defendant half of the amount of his claim, and in the other be punished by a fine equal to half of the recovery against him, and that such law by its terms applied only to laboring men, would there be the slightest hesitation in holding that the laborer was denied the equal protection of the laws? The mere fact that the courts are open to hear his claim or defense is not sufficient if upon him and upon him alone there is visited a substantial penalty for a failure to make good his entire claim or defense. Take another illustration: Suppose a statute that every corporation failing to establish its entire claim, or make good its entire defense, should as a penalty therefor forfeit its corporate franchise, and that no penalty of any kind except the matter of costs was attached to like failures of other litigants, could it be said that the corporations received the equal protection of the laws? Take still another illustration: Suppose a law which, while opening the doors of the courts to all litigants, provided that a failure of any plaintiff or defendant to make good his entire claim or entire defense should subject him to a forfeiture of all his property or to some other great penalty; then, even if, as all litigants were treated alike, it could be said that there was equal protection of the laws, would not such burden upon all be adjudged a denial of due process of law? Of course, these are extreme illustrations, and they serve only to illustrate the proposition that a statute (although in terms opening the doors of the courts to a particular litigant) which places upon him as a penalty for a failure to make good his claim or defense a burden so great as to practically intimidate him from asserting that which he believes to be his rights is, when no such penalty is inflicted

upon others, tantamount to a denial of the equal protection of the laws. It may be said that these illustrations are not pertinent because they are of civil actions, whereas this statute makes certain conduct by the stock yards company a criminal offense, and simply imposes punishment for such offense: that it is within the competency of the legislature to prescribe the penalties for all offenses, either those existing at common law or those created by statute; and further, that although the penalties herein imposed may be large, yet obedience to a statute like this can only be secured by large penalties; for otherwise the company, being wealthy and powerful, might defiantly disregard its mandates, trusting to the manifold chances of litigation to prevent any serious loss from disobedience. A penalty of a dollar on a large corporation, whose assets amount to millions, would not be very deterrent from disobedience. It is doubtless true that the State may impose penalties such as will tend to compel obedience to its mandates by all, individuals or corporations, and if extreme and cumulative penalties are imposed only after there has been a final determination of the validity of the statute, the question would be very different from that here presented. But when the legislature, in an effort to prevent any enquiry of the validity of a particular statute, so burdens any challenge thereof in the courts, that the party affected is necessarily constrained to submit rather than take the chances of the penalties imposed, then it becomes a serious question whether the party is not deprived of the equal protection of the laws.

But it is not necessary to rest our decision upon this consideration, which was not fully discussed by counsel, but pass to a question which is of a kindred nature and in which there is presented no matter of the doubtful construction of a statute.

The act in terms applies only to those stock yards within the State "which for the preceding twelve months shall have had an average daily receipt of not less than one hundred head of cattle, or three hundred head of hogs, or three hundred head of sheep."

It appears affirmatively from the testimony that there are other stock yards in the State, one at Wichita and one at Jamestown, and it is stated by counsel for appellants that there are many others scattered through the State, each doing a small business. Neither the yard at Wichita nor that at Jamestown, so far as the testimony shows, comes within the scope of this act. So it may be assumed from the record that the legislature of Kansas, having regard simply to the stock yards at Kansas City and the volume of business done at those yards, passed this act to reduce their charges. Undoubtedly, the act is general in its terms, and we may not, therefore, stop to inquire whether it conflicts with the constitutional prohibition contained in Article 2, sec. 17, of the Constitution of Kansas:

"SEC. 17. All laws of a general nature shall have a uniform operation throughout the State; and in all cases where a general law can be made applicable no special law shall be enacted."

It may be assumed, for the purposes of the question now to be considered, that so far as the constitution of Kansas is concerned its legislature may enact a law, general in its terms, and yet so phrased as necessarily to have operation only upon a single individual or corporation, but while making that concession we cannot shut our eyes to the fact that this act is precisely the same in its effect as though the legislature had said in terms that the Kansas City stock yards alone shall be subjected to its provisions. Accepting, however, the full force of the general language in which the statute is couched, it appears that a classification is attempted between stock yards doing a large and those doing a small business. The express and only basis of classification is in the amount of business done by the two classes. As evidence that we are right in our construction, we may refer to the brief of the learned Attorney General, in which he says:

"The legislature has, by this act, classified the stock yards of the State into two classes, and has adopted the most natural and reasonable basis for such purposes that could be used, namely, the volume of business done. The reason for this is obvious; the stock yards doing a large volume of business are necessarily more of monopolies than those doing a smaller business. The public has greater interest in the business of large stock yards than it has in the business of smaller ones.

* * * * * *

"Another reason why the classification should be based upon the volume of business done is, that rates which are reasonable and proper and furnish a sufficient return upon the capital invested can very properly be made lower and different in a plant where the volume of business is large, while in a smaller plant doing a smaller volume of business higher rates may be necessary in order to afford adequate returns."

If the average daily receipts of a stock yard are more than one hundred head of cattle, or more than three hundred head of hogs, or more than three hundred head of sheep, it comes within the purview of this statute. If less than that amount it is free from legislative restriction. No matter what yards it may touch to-day or in the near or far future, the express declaration of the statute is that stock yards doing a business in excess of a certain amount of stock shall be subjected to this regulation, and that all others doing less business shall be free from its provisions. Clearly the classification is based solely on the amount of business done and without any reference to the character or value of the services rendered. Kindred legislation would be found in a statute like this: requiring a railroad company hauling ten tons or over of freight a day to charge only a certain sum per ton, leaving to other railroad companies hauling a less amount of freight the right to make any reasonable charge; or, one requiring a railroad company hauling a hundred or more passengers a day to charge only a speci-

fied amount per mile for each, leaving those hauling ninety-nine or less to make any charge which would be reasonable for the service; or (if we may indulge in the supposition that the legislature has a right to interfere with the freedom of private contracts), one which would forbid a dealer in shoes and selling more than ten pairs a day from charging more than a certain price per pair, leaving the others selling a less number to charge that which they deemed reasonable; or, forbidding farmers selling more than ten bushels of wheat to charge above a specified sum per bushel, leaving to those selling a less amount the privilege of charging and collecting whatever they and the buyers may see fit to agree upon. In short, we come back to the thought that the classification is one not based upon the character or value of the services rendered but simply on the amount of the business which the party does, and upon the theory that although he makes a charge which everybody else in the same business makes, and which is perfectly reasonable so far as the value of the services rendered to the individuals seeking them is concerned, yet if by the aggregation of business he is enabled to make large profits his charges may be cut down.

The question thus presented is of profoundest significance. Is it true in this country that one who by his attention to business, by his efforts to satisfy customers, by his sagacity in discerning the probable courses of trade, and by contributing of his means to bring trade into those lines, succeeds in building up a large and profitable business, becomes thereby a legitimate object of the legislative scalping knife? Having created the facilities which the many enjoy, can the many turn around and say, you are making too much out of those facilities, and you must divide with us your profits? We cannot shut our eyes to well-known facts. Kansas is an agricultural State. Its extensive and fertile prairies produce each year enormous crops of corn and other grains. While portions of these crops are shipped to mills to be manufactured into meal and flour, it is found by many that there is a profit in feeding them to stock, so that the amount of stock which is raised and fattened in Kansas is large, and makes one of the great industries of the State. Now, shall they whose interests are all along the line of production, having by virtue of their numerical majority the control of legislation, be permitted to say to one who acts as an intermediary between transportation and sale, that while we permit no interference with the prices which we put upon our products, nevertheless we cut down your charges for intermediate services; and this not because any particular charge is unreasonable, but because you are making by the aggregate of those charges too large a sum, and ought therefore divide with us. The possibility of such legislation suggests the warning words of Judge Catron, afterwards Mr. Justice Catron of this court, when in *Vanzant* v. *Waddell*, (2 Yerger, 62, 70,) he said:

"Every partial or private law, which directly proposes to destroy or affect individual rights, or does the same thing by affording remedies leading to similar consequences, is unconstitutional and void. Were this otherwise, odious individuals and corporate bodies would be governed by one rule, and the mass of the community, who made the law, by another."

The Fourteenth Amendment forbids any State to "deny to any person within its jurisdiction the equal protection of the laws." The scope of this prohibition has been frequently considered by this court.

In *Barbier* v. *Connolly*, (113 U. S. 27, 31,) it was said:

"The Fourteenth Amendment, in declaring that no State 'shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws,' undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs and the enforcement of contracts; that no impediment should be interposed to the pursuits of any one except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses."

And in *Bell's Gap R. R. Co.* v. *Pennsylvania* (134 U. S. 232, 237):

"The provision in the Fourteenth Amendment, that no State shall deny to any person within its jurisdiction the equal protection of the laws, was not intended to prevent a State from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them. All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the State legislature, or the people of the State in framing their constitution. But clear and hostile discriminations against particular persons and classes, especially such as are of an unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition. It would, however, be impracticable and unwise to attempt to lay down any general rule or definition on the subject that would include all cases."

In *Gulf, Colorado & Santa Fé Railway Co.* v. *Ellis*, (165 U. S. 150, 159,) in which was presented solely the question of classification, we said, referring to many cases, both State and national:

"But arbitrary selection can never be justified by calling it classification. The equal protection demanded by the Fourteenth Amendment forbids this. No language is more worthy of frequent and thoughtful consideration than these words of Mr. Justice Matthews, speaking for this court, in *Yick Wo* v. *Hopkins*, (118 U. S. 356, 369): 'When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitary power.' The first official action of this nation declared the foundation of government in these words: 'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness.' While such declarations of principles may not have the force of organic law, or be made the basis of judicial decision as to the limits of right and duty, and while in all cases reference must be had to the organic law of the nation for such limits, yet the latter is but the body and the letter of which the former is the thought and the spirit, and it is always safe to read the letter of the Constitution in the spirit of the Declaration of Independence. No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government."

These authorities are referred to again with approval in *Magoun* v. *Illinois Trust & Savings Bank*, (170 U. S. 283.)

But we may, perhaps, come closer to the particular statute when we consider the decisions of the Supreme Court of Kansas, the State by whose legislature this act was passed. In *The State* v. *Haun*, (61 Kan. 146,) there was presented for consideration a statute providing for the payment of the wages of laborers in money, coupled with this provision in sec. 4:

"SEC. 4. This act shall apply only to corporations or trusts, or their agents, lessees or business managers, that employ ten or more persons."

The act was held unconstitutional. After referring to an alleged defect in the title, the court said (p. 152):

"We have no hesitation in saying that if this statute had, without defect as to title, clearly and in express terms amended corporate charters, retaining the section classifying corporations to which it was applicable by the number of men in their employ, it would be obnoxious to the Fourteenth Amendment to the Constitution of the United States."

Again on pp. 153, 154:

"The obvious intent of the act is to protect the laborer and not to benefit the corporation. Why should not the nine employees who work for one corporation be equally protected with the eleven engaged in the same line of employment for another corporation? If such law is beneficial to wage earners in the one instance, why not in the other? The nine men lawfully paid for their labor in goods at a truck store might with much reason complain that the protection of the law was unequal as to them, when they saw eleven men paid in money for the same service performed for another corporation engaged in a like business. Such inequality destroys the law.

In the instance cited, two of the eleven men might quit the employment of the company for which they worked, and by this act alone make a method of payment by the corporation lawful which was unlawful while the eleven were employed. The criminality or innocence of an act done ought not to depend on the happening of such a circumstance. Equal protection of the laws means equal exemption with others of the same class from all charges and burdens of every kind. . . . A classification of the kind attempted makes a distinction between corporations identically alike in organization, capital and all other powers and privileges conferred by law. It is arbitrary and wanting in reason. The act in question is class legislation of the most pronounced character."

And in support of these views the court quoted from Cooley's Constitutional Limitations, 5th ed. 484, 486:

"Every one has a right to demand that he be governed by general rules and a special statute which, without his consent, singles his case out as one to be regulated by a different law from that which is applied in all similar cases, would not be legitimate legislation, but would be such an arbitrary mandate as is not within the province of free governments. Those who make the laws 'are to govern by promulgated, established laws, not to be varied in particular cases, but to have one rule for rich and poor, for the favorite at court and the countryman at plow.' This is a maxim in constitutional law, and by it we may test the authority and binding force of legislative enactments."

So we have the clear declaration of the Supreme Court of Kansas that legislation by which one individual or even one set of individuals is selected from others doing the same business in the same way and subjected to regulations not cast upon them, is a discrimination forbidden by the constitutional provision which obtains both in the Constitution of Kansas and in that of the United States to the effect that the equal protection of the laws is guaranteed to all.

May we not rightfully accept this declaration of law by the highest tribunal of the State by whose legislature the act in question was passed, and, accepting the reasoning of that decision, does it not follow that, if an act which provides certain regulations for corporations employing ten or more laborers and leaving corporations employing less than that number free from such regulations is an unjust discrimination and a denial of the equal protection of the laws, an act which imposes regulations upon corporations doing business over a certain amount and leaving all corporations doing a like business less than that amount free from such regulations is equally obnoxious to constitutional prohibition?

The significance of the question thus clearly stated and forcibly answered by the Supreme Court of Kansas cannot be overestimated. It is not the province of this or any other court to consider its purely economic features. It may or it may not be wise, looking at it from such standpoint, to say to every citizen that his industry, ability, activity and foresight may be rewarded up to a certain extent and that beyond that he may not

go. But whether it is wise or unwise, is not for the courts to determine. Their limits of inquiry are purely judicial. And the single matter for our present consideration is whether in the restraint which the legislature of Kansas has attempted to impose upon this stock yards company it has trespassed upon those rights which by the Constitution of the United States are secured to every individual against State action. It has been more than once said judicially that one of the principles upon which this government was founded is that of equality of right. It is emphasized in that clause of the Fourteenth Amendment which prohibits any State to deny to any individual the equal protection of the laws. That constitutional provision does not, it is true, invalidate legislation on the mere ground of inequality in actual result. Tax laws, for instance, in their nature are and must be general in scope, and it may often happen that in their practical application they touch one person unequally from another. But that inequality is something which it is impossible to foresee and guard against, and therefore such resultant inequality in the operation of a law does not defeat its validity. As was said in this court in *Merchants' Bank* v. *Pennsylvania*, (167, U. S. 461, 463):

"If it be said that a lack of uniformity renders the statute obnoxious to that part of the Fourteenth Amendment to the Federal Constitution which forbids a State to 'deny to any person within its jurisdiction the equal protection of the laws,' it becomes important to see in what consists the lack of uniformity. It is not in the terms or conditions expressed in the statute, but only in the possible results of its operation. Upon all bank shares, whether State or national, rests the ordinary State tax of four mills. To every bank, State or national, and all alike, is given the privilege of discharging all tax obligations by collecting from its stockholders and paying eight mills on the dollar upon the par value of the stock. If a bank has a large surplus, and its stock is in consequence worth five or six times its par value, naturally it elects to collect and pay the eight mills, and thus in fact it pays at a less rate on the actual value of its property than the bank without a surplus, and whose stock is only worth par. So it is possible, under the operation of this law, that one bank may pay at a less rate upon the actual value of its banking property than another; but the banks which do not make this election, whether State or national, pay no more than the regular tax. The result of the election under the circumstances is simply that those electing pay less. But this lack of uniformity in the result furnishes no ground of complaint under the Federal Constitution. Suppose, for any fair reason affecting only its internal affairs, the State should see fit to wholly exempt certain named corporations from all taxation. Of course, the indirect result would be that all other property might have to pay a little larger rate per cent. in order to raise the revenue necessary for the carrying on of the State government, but this would not invalidate the tax on other property or give any right to challenge the law as obnoxious to the provisions of the Federal Constitution."

So again exercising the undoubted right of classification it may often happen that some classes are subjected to regulations, and some individuals

are burdened with obligations which do not rest upon other classes or other individuals not similarly situated. License taxes are imposed on certain classes of business, while others are exempt. It would practically defeat legislation if it was laid down as a rule that a statute was necessarily adjudged invalid if it did not bring all within its scope or subject all to the same burdens. It would strip the legislature of its inherent power to determine generally what is for the general interests, which interests may often be promoted by certain regulations affecting one class which do not affect another—certain burdens imposed on one which do not rest upon another.

But while recognizing to the full extent the impossibility of an imposition of duties and obligations mathematically equal upon all, and also recognizing the right of classification of industries and occupations, we must nevertheless always remember that the equal protection of the laws is guaranteed, and that such equal protection is denied when upon one of two parties engaged in the same kind of business and under the same conditions burdens are cast which are not cast upon the other. There can be no pretence that a stock yard which receives 99 head of cattle per day a year is not doing precisely the same business as one receiving 101 head of cattle per day each year. It is the same business in all its essential elements, and the only difference is that one does more business than the other. But the receipt of an extra two head of cattle per day does not change the character of the business. If once the door is opened to the affirmance of the proposition that a State may regulate one who does much business, while not regulating another who does the same but less business, then all significance in the guarantee of the equal protection of the laws is lost, and the door is opened to that inequality of legislation which Mr. Justice Catron referred to in the quotation above made. This statute is not simply legislation which in its indirect results affects different individuals or corporations differently, nor with those in which a classification is based upon inherent differences in the character of the business, but is a positive and direct discrimination between persons engaged in the same class of business, and based simply upon the quantity of business which each may do. If such legislation does not deny the equal protection of the laws, we are unable to perceive what legislation would. We think therefore that the principle of the decision of the Supreme Court of Kansas in *State* v. *Haun*, *supra*, is not only sound, but is controlling in this case, and that the statute must be held unconstitutional, as in conflict with the equal protection clause of the Fourteenth Amendment.

There yet remains a question of jurisdiction. The two suits which were consolidated were each brought by a stockholder in behalf of himself and all other stockholders against the corporation, its officers, and also the Attorney General of the State of Kansas. The object of the suits was

to restrain the Attorney General from putting in force the statute, and the defendants from reducing the funds of the corporation, and therefore the dividends to the stockholders, by yielding compliance to the mandates of the statute, and failing to charge reasonable rates.

Of the jurisdiction of the court over the consolidated suit as one involving a controversy between the stockholders and the corporation and its officers, no serious question is made. *Dodge* v. *Woolsey*, (18 How. 331;) *Hawes* v. *Oakland*, (104 U. S. 450;) *Pollock* v. *Farmers' Loan & Trust Co.*, (157 U. S. 429;) *Smyth* v. *Ames*, (169 U. S. 466,) seem conclusive on the question. There is no force in the suggestion that the officers of the corporation agreed with the stockholders as to the unconstitutionality of the statute, and that therefore the suit is a collusive one. That was the condition in *Dodge* v. *Woolsey*, *supra*, and it only emphasizes the fact that the officers were refusing to protect the interests of the stockholders, not wantonly, it is true, but from prudential reasons.

But the serious contention is that the court had no jurisdiction over the suit as against the Attorney General of the State, and this on two grounds: First, because it is in effect a suit against the State, and therefore forbidden by the Eleventh Amendment to the Federal Constitution; and, secondly, because it is an attempt on the part of a court of equity to restrain criminal proceedings. It is contended on the other hand that it is not a suit against the State because it does not in any way involve its pecuniary interest, and is only an effort to prevent an officer of the State from putting in force an unconstitutional statute; that it does not attempt to interfere with criminal proceedings, because none have been commenced and none are pending, but involves simply a challenge of the constitutionality of the statute. It is also urged that the Attorney General, when served with process, did not raise either defense; did not suggest that this was in effect a suit against the State, or that it was an attempt to interfere with criminal proceedings; that he pleaded several defenses and went into a trial of the merits on a motion for permanent injunction; took part in the taking of an immense amount of testimony and in an argument before the trial judge upon the question of the validity of the statute, and when its validity had been adjudged, then for the first time and as a preliminary to a final decree, to be entered without further testimony, filed an answer containing a formal plea that the suit was one in effect against the State. It is further contended that by the statutes of Kansas, (Comp. Laws Kans. 1879, p. 901, sec. 5589,) the Governor may require the Attorney General to appear for the State in any court and prosecute or defend therein any cause or matter, civil or criminal, in which the State may be a party or interested, and that while no request from the Governor was shown the trial court was justified, in the absence of some challenge of its jurisdiction, in assuming that such request had been given,

and that it would be grossly inequitable, after a full inquiry upon the merits in such court and an adjudication in favor of the validity of the statute, to permit the Attorney General by a formal plea of jurisdiction to prevent any review of the merits in this court.

Without expressing any opinion as to the jurisdiction of the court if it had been properly and seasonably challenged, we think the true solution of this matter will be found in reversing the decree upon the merits, and directing a dismissal of the suit as to the Attorney General, without prejudice to any other suit or action. It is, therefore, ordered, that the decree of the Circuit Court be reversed, and the case remanded to that court, with instructions to enter a decree in favor of the plaintiffs and against the corporation and its officers, in accordance with the prayer of the bills, and also a decree dismissing the suit as to the Attorney General of Kansas, without prejudice to any further suit or action.

Mr. Justice HARLAN, with whom concurred Mr. Justice GRAY, Mr. Justice BROWN, Mr. Justice SHIRAS, Mr. Justice WHITE and Mr. Justice MCKENNA.

We assent to the judgment of reversal—so far as the merits of this case are concerned—upon the ground that the statute of Kansas in question is in violation of the Fourteenth Amendment of the Constitution of the United States, in that it applies only to the Kansas City Stock Yards Company and not to other companies or corporations engaged in like business in Kansas, and thereby denies to that company the equal protection of the laws. Upon the question whether the statute is unconstitutional upon the further ground that, by its necessary operation, it will deprive that company of its property without due process of law, we deem it unnecessary to express an opinion.

True copy.

Test:

Clerk Supreme Court, U. S.